EXHIBIT B (contd.)

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Exhibit 1 – Transcript of August 31, 2021 Hearing

REPORTER'S RECORD
VOLUME 1 OF 1 VOLUME

NEIL HESLIN, Plaintiff VS. ALEX E. JONES, INFOWARS, LLC, ET AL., Defendant	) IN THE DISTRICT COURT)) TRAVIS COUNTY, TEXAS)) 459TH JUDICIAL DISTRICT))) TRIAL COURT CAUSE NO.) D-1-GN-18-001835 AND) D-1-GN-19-004651
LEONARD POZNER AND VERONIQUE DE LA ROSA, Plaintiff VS. ALEX E. JONES, INFOWARS, LLC, ET AL., DEFENDANTS	) IN THE DISTRICT COURT)) TRAVIS COUNTY, TEXAS)) 459TH JUDICIAL DISTRICT))) TRIAL COURT CAUSE NOS.) D-1-GN-18-001842)
SCARLETT LEWIS, Plaintiff VS. ALEX E. JONES, INFOWARS, LLC, ET AL., DEFENDANTS	) IN THE DISTRICT COURT)) TRAVIS COUNTY, TEXAS)) 459TH JUDICIAL DISTRICT))) TRIAL COURT CAUSE NO.) D-1-GN-18-006623)

MOTION TO COMPEL; MOTION FOR SANCTIONS

On the 31st day of August, 2021, the following proceedings came on to be heard in the above-entitled and numbered cause before the Honorable Maya Guerra Gamble, Judge presiding, held in Austin, Travis County, Texas, held via videoconference;

Proceedings reported by machine shorthand.

A P P E A R A N C E S

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TUESDAY, AUGUST 31, 2021 - MORNING PROCEEDINGS

(The following proceedings were held in open court, via YouTube:)

THE COURT: So, we're on the record, we are here today for D-1-GN-18-001835, Heslin versus Jones; D-1-GN-18-001842, Pozner versus Jones -- oh, I have the wrong piece of paper here -- and D-1-GN-18-006623, Lewis versus Jones.

Is that right, Mr. Bankston?

MR. BANKSTON: That is correct, Your Honor.

THE COURT: Can I have your announcement for the record, please, Mr. Bankston.

MR. BANKSTON: Sure. Mark Bankston appearing for all of the plaintiffs in this matter.

THE COURT: All right, and Mr. Reeves.

MR. REEVES: Brad Reeves for defendants in all the matters.

THE COURT: All right. So, Mr. Bankston and Mr. Reeves, we had a brief conversation about what we were going to cover today. And now that we're on the record we're going to go ahead and get started.

Mr. Bankston, all of the motions today are yours. Do you have a preference on what order you would like to take them?

MR. BANKSTON: Well, actually, Your Honor, I kind of figured, for convenience and efficiency sake, we do a presentation that kind of brings up the histories of the cases and, because these discovery disputes kind of weave in and out of each other, I was planning on dealing with them kind of collectively.

THE COURT: All right. I think that's fine.

MR. BANKSTON: As opposed to doing the same material over and over again.

THE COURT: I noticed a lot of overlap reading the briefs getting ready for today. That is an excellent suggestion and I'm ready when you are.

MR. BANKSTON: Okay. Your Honor, I'm going to share my screen, if that's okay.

THE COURT: Yes, please.

MR. BANKSTON: Let's see if this is working.

THE COURT: It is working. I do see like your slides and everything. It's not like the presentation mode, if you care about that.

MR. BANKSTON: I do, actually, and I have it up and now it's on a different screen than what I seem to be sharing. I take it you can just see the PowerPoint screen, not a full presentation screen.

THE COURT: Correct, correct. I see the whole behind the scenes.

MR. BANKSTON: I'm not -- hold on.

MR. REEVES: If you go to the share screen button, if you have two screens on your computer it should allow you to change to the other screen.

MR. BANKSTON: If I go to the share button to number two. Oh, man I'm trying here, hold on here.

THE COURT: You can unshare it.

MR. BANKSTON: I got it.

Okay. Now are y'all seeing my presentation?

THE COURT: Yes.

MR. REEVES: Yes.

THE COURT: Okay. Great. Okay. And I'm going to minimize these windows here so I can see. All right.

So, Your Honor, as you know, we're going to be covering all four cases. And I think there's no better place than to start from the beginning. So the first thing that we are going to do, if -- oh, great. There we go. All right.

Your Honor, the first case that we're dealing with today is Heslin v Jones. This was the defamation case involving InfoWars' allegations that Mr. Heslin was lying about holding his dead child after Sandy Hook. Mr. Heslin had appeared on Megyn Kelly's show to push back against Mr. Jones' allegations that this entire incident was fake. After he did that, he was

retaliated against when they said that he was lying about having held his son.

That case was brought back in 2018. And, in fact, a discovery order was entered on August 31st, 2018, so it's sort of happy third birthday to our discovery order in this case. That order, which to this date has never been responded to in any way, shape, or form, required written discovery in deposition of all the defendants. About 30 pages of written discovery and then for each of the four defendants. The defendants refused to respond to that discovery.

Actually, it's correct to say they did respond, but their responses simply said, the court does not have the authority to order us to answer this discovery, so we're not going to do it. So they basically just told the court to pound sand. We immediately filed a motion for contempt, being very alarmed with that. They appealed the following day. So for a moment let's stick a pin in Mr. Heslin's case, that second motion for contempt, because that went up on appeal.

And that brings us to our next case, which is Lewis versus Jones. Mrs. Lewis is the co-parent with Mr. Heslin of Jesse Lewis, a victim of Sandy Hook.

Mrs. Lewis brought her suit a little bit later. Her suit alleges intentional infliction of emotional distress, because InfoWars made false statements about the circumstances of the death of her child.

In that case the court likewise -- in the discovery orders on January 25th and March 8th, 2019, that also required written discovery and deposition of all the defendants. The defendants refused to respond to that discovery. They did show up for deposition, but they failed to prepare their corporate representative for the companies. That was Rob Dew. And, as noted by the court during the hearing, it was a completely useless deposition, Mr. Dew did not have any idea what he was supposed to be talking about, had no idea he was supposed to prepare for the deposition, and basically answered "I don't know" to every single question.

We filed a motion for sanctions. On the eve of that hearing, defendant provided a document dump filled with nonresponsive materials, and we'll talk a little bit more about those materials in a bit here. But for the moment we can just say everybody at that moment was in agreement that this discovery production was a mess.

Defendant's counsel, during that hearing,

begged the court not to enter actual sanctions on the record and instead said that he would agree to privately pay $8,000 in attorneys fees and surrendered his client's TCPA motion except for a single legal issue: They wanted to argue, the only thing they wanted to argue, was that Mrs. Lewis could not bring a claim if she had not been personally identified.

And we knew this argument was bunk because, for instance, when Natalie Holloway disappeared in Aruba, her mother, Elizabeth Holloway, was able to sue the "National Inquirer" when the "National Inquirer" made false statements about her daughter's disappearance. So we knew first the identification of the plaintiff wasn't an issue, so we agreed to forego the component of the motion seeking to strike the TCPA motion, because we knew we had it in the bag by then.

Those appeals actually turned out to be a little bit differently so we aren't going to be accepting those kind of stipulations in the future, but for the moment that's what's happened there and discovery was still a very big mess.

What happened next in the chain of events is actually the Connecticut case was part of the same process. As you know, there is a different group of parents who are suing in Connecticut. They are

undergoing exactly the same kind of anti-SLAPP process except Connecticut's deadlines on that are a little more generous, so they were actually going a little bit after the Lewis case.

So, once the Lewis case happened and that discovery problem, we then had the discovery problems in Lafferty. And these become relevant to our cases a little bit later. What had happened there is that, by March of 2019, the defendants had violated numerous discovery orders. And this is the Connecticut Supreme Court kind of summarizing what happened in that case.

Defendants' local counsel at that time, this is, you know, March and April, started saying that he was in an ethically ambiguous position and he could not discharge his obligations on the pending discovery orders in a way that would permit him to put his signature to a document. He said, the discovery situation is a mess right now. That's Exhibit 5 to our brief.

Judge Bellis gave one final extension and then defendants produced a dozen files of child pornography.

Plaintiff's counsel in Connecticut informed the F.B.I., my counterpart Chris Mattei up there. And after InfoWars was informed, Jones appeared on his show

and threatened plaintiff's counsel. None of this was public at this point, this was Jones making it public. Jones called plaintiff's counsel gang members, offered a bounty on their heads.

And you have to remember that, to Jones, all of us are one big group. We're a conspiracy of democratic operative lawyers who have been recruited and, by his words, by George Soros, who put on payroll and Hillary Clinton is directing us. And we're the people he's coming after. Specifically in this video, too, he was threatening Chris Mattei directly.

Now, what I want to show you now, Your Honor, this is our plaintiff's hearing Exhibit 1, this is a video clip, uh, from April 2019. This was actually admitted and played in court in our last hearing in this case, in December 20th, 2019. The sort of hearing that we're continuing right now. So this has already been admitted and is part of the record, but I'm going to offer it now because I want to play a video for you of what Jones said right after all of that happened.

THE COURT: All right.

MR. BANKSTON: Also I should warn this -- for the folks who are on the live stream, this video I'm about to play is extremely not safe for work. Um. It has a lot of profanity in it. Also, even if you're

okay with the profanity, if you have children in the room this video gets a little frightening at points. So I just want to warn the live stream people.

THE COURT: Thank you.

(Video recording played off the record.)

MR. BANKSTON: Okay. So, that is what Mr. Jones said. Obviously that was very, very disturbing to us.

Right after that, Judge Bellis assessed sanctions and struck InfoWars's motion to dismiss. She cited the production of child pornography, the despicable, potentially criminal, threats. There was also a fraudulent affidavit submitted up there in Connecticut that was not actually signed by Mr. Jones. But the court said, even if you ignore all of that, which is completely unprecedented, there were still multiple failures to comply with these discovery deadlines. Defendants would not fairly comply with their discovery obligations.

Judge Bellis said at that time that she wasn't going to grant a default, but if there's continued obfuscation and delay and tactics like I've seen up to this point, I will not hesitate, after a hearing and an opportunity to be heard, to default the Alex Jones defendants if they, from this point forward,

continue with their behavior with respect to discovery. You can see that in Exhibit 6.

The next thing that happened was Heslin versus Jones comes back to Texas. As you remember, that case had gone up on appeal after they refused to answer discovery and we had brought a motion for contempt. That was dismissed on August 30th, 2019. For the next month, InfoWars did absolutely nothing. Just like they've done in this case, actually.

Judge Jenkins then held a hearing on October 3rd, 2019. And you can see from that hearing he is extremely puzzled why, after everything that's happened in this case, these defendants are still refusing to respond to discovery and will not obey his orders.

Now, I'm sure you know Judge Jenkins, him being one of the more senior judges in this last generation. And lawyers around here will tell you, you do not get sanctions from Judge Jenkins. Judge Jenkins, I think to his credit, is a judge who vigorously pursues conciliatory actions and tries to work things out and really wants to give people a chance. You know, he didn't sanction immediately in the Lewis case.

The idea of Judge Jenkins granting a contempt

sanction and a $25,000 fine is pretty extreme in this courthouse. I haven't found anybody who has ever heard of it happening. But at that point he was upset and went ahead and granted the motion and granted our attorneys fees.

They had another chance to comply, because right at the same time that that had happened Mr. Heslin's claim for intentional infliction of emotional distress came for a hearing on expedited discovery. And once again for the -- now, again in Mr. Heslin's case, Judge Jenkins ordered discovery for the claim -- for the IIED claim. That discovery order was entered on October 18th, 2019. That required written discovery and depositions of Jones, Free Speech Systems, and their chief editor, Paul Watson.

So, let's talk about what happened there. First, the defendants gave false and evasive answers to discovery. And what you need to understand, as you see from our exhibits in here, the written discovery that was served in the court's discovery order is very simple stuff. It is very simple. It's stuff like, identify all the videos about Sandy Hook; identify all the employees who were involved in those videos; identify -- for every statement, you know, here are 17 statements you made about Sandy Hook, identify your

source for those statements; identify the methods of communication that's used in the office.

All of them were not answered. They were given answers with things like, our sources were newspapers and things we found on the internet. When asked who was involved in these episodes: Alex Jones and Rob Dew and maybe some other people. We don't know. We can't figure it out. They would never tell me what videos there are. Any of the most basic information in interrogatories or request for production, completely evaded.

They failed to prepare Mr. Dew, again. And this is what's really shocking, Judge Jenkins was clearly shocked by this, that the exact same deponent, who was vigorously chewed out about not being prepared, they show up again and perform the some mockery of the deposition again. In fact, both depositions.

They failed to remedy the document production, and we're going to talk about this a little bit later, there's some really alarming testimony about what has and hasn't been produced in this case and that there should be a lot more production that has not happened, And that was confirmed in some of those depositions.

And those depositions also revealed other

alarming irregularities. We know that there was no discover -- I mean, no litigation hold put out in this case. It was never until 2019 was there any communication with inside InfoWars to tell people to preserve documents. And at that point they just sent an email to every employee saying, hey, if you have any documents, collect them and bring them to us. Nobody actually went and searched or monitored any of this. The very employees who may have been giving the most damning testimony were told to go look for documents on their own files. And what happened? Not a single employee returned a single document.

The defendants also failed to produce crucial evidence, and this is -- at the heart of it is mostly the videos that are at the heart of plaintiff's claim, which we don't yet have. As you know from the briefing, very soon after we sued, all of their videos started being taken down off of line. So none of them are publically available like they used to be. InfoWars has made at this point our best estimate is over a hundred videos on Sandy Hook. We don't have that. And of course we don't have their social media.

One thing that the briefing gives you a flavor for is all those things, I don't think the briefing quite gives you a flavor for how evasive

Mr. Jones was on these issues, on things like his sources and identifying those in interrogatories or methods of communication or the videos. Any of it.

And so I want to show you just about ten minutes from Mr. Jones' November 2019 deposition, because I do think it gives you a flavor of the bad faith we've seen in this case. And this is plaintiff's hearing Exhibit Number 2 which I'm going to play now.

THE COURT: Can you turn the volume up, Mr. Bankston?

MR. BANKSTON: I'm going to see how I can, if I can do that.

THE COURT: Because I already turned it up a lot on my end.

MR. BANKSTON: And I'm wondering if it's --

THE COURT: If that makes you loud.

MR. BANKSTON: -- if you controlled the volume on your end, I don't know.

Let me see what I can do here to make sure I'm all the way up. Okay, let's try this.

(Video recording played off the record.)

THE COURT: Can I interrupt you, Mr. Bankston?

MR. BANKSTON: Yes, you sure can.

Are you having hearing problems on it?

THE COURT: Yes, we just can't hear it. And I realize I should have made it clear before you started playing videos that, because they're exhibits, I don't ask my court reporter to record the content of the video.

MR. BANKSTON: Sure.

THE COURT: Okay. So just -- I just realized I should have made that clear, because I think some courts do that differently.

MR. BANKSTON: Okay.

THE COURT: And she also can't understand it well enough to make a record, even if I had asked her to. She did let me know that. But typically an exhibit I do not have her record the contents.

MR. BANKSTON: And, Your Honor, I also figured out just now how I can -- the problem was the sound is coming through my speaker to my microphone. I figured out how I can share the sound directly.

THE COURT: That was the second thing I was going to say is when you share a video you have to click to share audio also.

MR. BANKSTON: Yes, I see that now.

THE COURT: Okay, wonderful. Let's try again. It's up to you whether you want to start over.

MR. BANKSTON: I think that's probably for

the best.

THE COURT: Okay.

MR. BANKSTON: Because we're doing good on time right now. I'm going to go ahead and start that over. And I just want to make sure, since I'm sharing again, that you all are seeing the screen in full screen.

THE COURT: The video is fine, it's the audio that's the problem.

(Video recording played off the record.)

THE COURT: That's better.

MR. BANKSTON: Is that better? Okay, great.

THE COURT: Much better.

MR. BANKSTON: All right.

(Videotape played off the record.)

MR. BANKSTON: Okay. So, for November during his deposition, I dealt with that for about three hours. We didn't get anywhere with Mr. Jones. Same thing with his corporate representatives, as you saw. The entire thing was a mess. They, despite everything that happened, were still not cooperating in discovery in any meaningful way.

We had a hearing on that motion. Their counsel at that time said the following, after the hearing did not go too well. He said:

"I will represent to this court that, you know, regardless if this goes on appeal, that doesn't preclude me from -- it precludes -- it stays the court as far as filing motions, et cetera. It certainly doesn't preclude me from providing additional videos, documents, and information they're seeking during that period of time. And I fully intend to do so. I've already started that process. So again, they're asking now for basically an instruction that, you know." And then he's cut off.

Judge Jenkins asks: So, what you're saying is you're going to continue to comply with the order, that includes written discovery, which is the exhibit to my order, ordering you to produce those things?"

Mr. Jeffries said, "Absolutely, judge. I'm representing to the court that I have spent countless hours understanding infrastructure, what exists, et cetera, et cetera, and I am certainly going to comply with that 100 percent, stay or no stay, moving forward, absolutely."

The court replies: "So, your point is let it come back to the trial judge who is going to try the case and see just how quickly you do that --

"Exactly.

" -- and how compliant you are with the order

before we make potentially outcome-determinative decisions."

Mr. Jeffries says, "Exactly right."

On December 20th, Judge Jenkins granted the motion for sanctions and assessed $100,000 in attorneys fees for all the work that we had done in deposition, bringing the motion, et cetera. The order holds the default judgment under advisement.

I think, as you'll see from that order and from the transcript, Judge Jenkins's opinion was that he only needed to decide the things that were immediately important then, which was the TCPA motion and whatever fees we needed. But whatever remedies needed to flow from whatever actions happened here in this court, that needed to be saved for the trial judge, who is going to have more control over the trial. Because he knew he was retiring.

I think also another cardinal sort of principle, Judge Jenkins's judicial philosophy, is that if it is possible to decide less, it is necessary to decide less. And in that case he did not want to decide something that he thought you should be deciding, which is, here we're going to give him another chance, the guy made a promise, he made a representation to the court to try to avoid a bigger

sanction by saying, we're going to get this taken care of, we're going to make sure that this happens and that we don't, you know, years don't go by and all this information is lost and we can't ever figure it out again.

The court's order says, "Defendants represented at the December 18th hearing that they would continue to supplement discovery to belatedly comply with the October 18th order. The amount of supplemental discovery is a factor that will be considered if the motion for sanctions is reconsidered on remand. That's Exhibit 1 is that order.

Now, for the next year and a half we go on the appeals and the defendant did not supplement any discovery, they just completely disregarded their promise to Judge Jenkins. They got out from under fire by using that promise and then they ignored it. They then continued an appeal, where obviously the court of appeals is very frustrated with them in the Lewis appeal and noted that in that record, and then in the second one, in the Heslin appeal, they went ahead and sanctioned them. So now we have another fine against them from the court of appeals because they're still engaging in frivolous litigation.

I need to mention right now, too, before we

get kind of caught up to date, about InfoWars' sham defense, because this becomes very important later after they start producing documents. This is in our supplemental brief on page 37.

Essentially, InfoWars defended the IIED case in Mr. Heslin's case the same way they did Mrs. Lewis's case, which is to say they argued that, because Mr. Heslin was not identified in any of the videos claiming IIED, as opposed to his defamation claim, that he could not pursue those IIED claims. Obviously we thought this all was bunk, but there's something more important going on, is in Mr. Heslin's case we requested from them transcripts of all these videos, and they wouldn't provide them. They said, we don't have them. They didn't give us any transcripts of these videos.

In fact, it came to be that there was never any transcripts of a certain amount of these videos because some of them had come off of YouTube and nobody had any transcripts. In the appeal it's even talked about how there are no transcripts. InfoWars argued because we could not prove -- we had no transcript to prove anything. And they also told the court in multiple representations, in these certain videos that they enumerated, we never identified Mr. Heslin.

Well, it turns out close to the end of the appeal we discovered, buried in the 5,000-page record of the Lewis case, that attached to an unrelated motion was a partial transcript of one of those videos. And that video, although Mr. Heslin's name was misspelled so we didn't catch it when we searched, they identify Mr. Heslin in that video.

In other words, the entire appeal that InfoWars launched against Mr. Heslin on his IIED case was based on a false representation by InfoWars that they didn't identify him, when they knew that they did.

Now, InfoWars claims that it's all my fault, that I should have found this errant transcript in the giant Lewis record before this happened. And maybe we should have found it earlier and that's certainly true. That doesn't excuse them lying about the fact that they didn't identify him to multiple courts. So all of that was a waste of time. But that actually becomes way more important later, and we'll talk about that in a minute.

Let's talk now about coming back on remand. After their appeals failed, they were remanded and the mandate was issued on June 4th. And so let's talk about what they're out of compliance of at that moment.

THE COURT: June 4th, 2021.

MR. BANKSTON: Correct, Your Honor, of this year. Right.

So, this is just a few month ago. And they came back and they are out of compliance first with the Heslin IIED discovery order with a default under advisement. That's everything we just talked about, where they had responded but the responses were absolutely bunk and their depositions were a complete joke.

The next thing they're out of compliance with is the Heslin defamation discovery order, the one from 2018, which they had already been held in contempt for and they had never answered in any way, shape, or form.

They were also out of compliance with the Lewis IIED order, for which they had already paid attorneys fees and admitted that the discovery situation there was a mess.

They were also out of compliance with the Pozner defamation discovery request, the next case that we haven't even talked about yet; because Pozner went up on appeal without any discovery first. We went ahead and just took that one up on appeal because the case was so strong. We didn't feel like we needed any discovery, they didn't have any of these complaints like they had in their later cases. But they had

discovery served at the outset of those cases, and after the TCPA motion was denied, ever since then, they've just completely ignored them.

So that's everything that was pending on remand. And what I thought was going to happen, Your Honor, because I knew when they made that promise they weren't going to supplement anything during the appeal, I knew that was a lie. But what I thought might happen is, when we got back on remand, I thought the moment that the Texas Supreme Court dismisses their case they would realize, okay, now we have to do something and at remand they would get in a panic and produce a bunch of things and show that they were in compliance with discovery and that I would have to be arguing to you that that wasn't good enough, that two years later, trying to make sense of any of this all would just be a mess, that's what I was going to have to do.

That is not what happened. Nothing could be further from what happened. From June 4th to August 26, 2021, Defendants did absolutely nothing in terms of any kind of discovery. There's nothing been produced. It wasn't until a couple of days before this hearing that I was inundated with some documents.

And so let's talk about what's happened during this entire summer that InfoWars has thrown in

the trash.

First there was June. And for that entire month there was no efforts made to comply with discovery in any case. This was just like in 2019, when Mr. Heslin's case came back from remand and for an entire month they had done nothing. And Judge Jenkins held them in contempt for that. Well, at the end of the month, with them doing nothing, we went ahead and filed our supplemental brief in support of the default sanctions in Mr. Heslin's IIED case.

We move to July. And in July still nothing has happened. On July 6 we bring the Heslin and Lewis motions for contempt. We had reached out to them, and that's an exhibit you'll see is our July 2nd letter. It's their only exhibit to their response. And that letter fully explains to them everything that's going on, why aren't you responding. And they at that point basically say, we have no idea what you're talking about. Please send us any discovery you say hasn't been responded to.

So at that point it's clear that they haven't even been working on Heslin and Lewis in the motions for contempt, so we filed those motions. We also at that point sent them the Pozner discovery requests, too, and say, these haven't been responded to.

On July 9th, three days later in oral hearing, we all met together and at that time I went through kind of a mini version of what I'm presenting to you now; and we also reminded them of their discovery problems in all three of those cases. One of the things you'll remember I specifically reminded them of on the record is, because the defendants in Fontaine had just filed a motion to un -- withdraw their deemed admissions, I told you that I expected for this hearing, when we were scheduling this hearing, that I expected one of the things we would have to accommodate was a motion to withdraw deemed admissions in the Pozner case, because those hadn't been answered. So I was expecting that to happen in a matter of days after the July 9th hearing. Because if I heard that I would get those denied and served up with a response.

Nothing happened. We gave them a deadline until July 16th, I believe, to respond, and they didn't. But we went ahead and gave them some more time just to see if they would. They didn't. So on July 27th we filed the Pozner motion for sanctions, which goes and describes all of this. They continued to do nothing.

August opens, and there's a couple of developments that happened in Lafferty in August that I

need to talk to you about. We filed a supplemental brief about this on August 10th.

So on August 6th, that Friday, there were two orders entered. First was a sanction order for continuing failure to comply with discovery. There's still -- they're in the same place we are, they've been remanded, now they're trying to go back and figure out, try to see if any of the discovery is getting answered. They have discovery orders there that they're not being complied with.

The second order was that they disclosed confidential information from a plaintiff's deposition. This -- Your Honor, this was astonishing. They started a plaintiff's deposition which at the beginning of the record was designated as attorneys eyes only, confidential. Then, during the actual deposition, defendant's counsel, the local counsel Mr. Randazza has working up there in Connecticut, wrote down the things the plaintiff was saying in the deposition, put them in a motion, and filed them publically during the deposition itself. Didn't even wait for its transcript and filed that publically and disclosed that information.

Now, you'll see from the court's orders on this what's clearly about to happen in Lafferty, which

is that now that Lafferty, just like in this case, had already threatened a default sanction if any of this keeps up, that's clearly what's been happening now, because the court's orders there takes very extreme language that you can see what it's doing, is saying that the plaintiff is now prejudiced from further prosecuting their claim and that the plaintiff is also prejudiced from taking additional depositions.

And the court also says that witnesses are going to be brightly afraid to appear in this case or give forthright testimony, believing that their confidential information will be disclosed. So all of those things about how the plaintiff can't even prosecute their case anymore, it's pretty obvious what's going to happen in Lafferty.

I thought that that would actually be taken care of by the time of this hearing, but their August 24th hearing was actually just a status conference call. They have a hearing set for September 24th. There's actually another sanctions pending motion regarding some analytics information that was produced that is also extremely troubling. So it's pretty clear where we're heading in Lafferty. They're heading for the same place.

Now, we get into the second week of August,

defendants still haven't done anything. And at this point we get this very strange email where, you'll see in hearing Exhibit 5, is that Mr. Reeves stated that his client does not possess what production has been provided to date. He asked plaintiffs to, send me the production you have, indeed, received to date.

So, I'm not sure how you would even supplement your own discovery if you don't even know what you've produced, but at this point it's now -- this, as you may remember, this is six days before the originally-scheduled hearing of this matter, they were asking me to send them the production because they don't even have it.

A week later we still don't have anything. And their counsel wrote again, asking if I would agree to a protective order for the overdue documents. Counsel said the documents were ready to produce but were being withheld because defendants require such an order to be entered. And we told them, very straight up, you cannot seek protection over discovery that is already due. Rule 192 requires you to make that motion or seek protection within the time period for the responses; and three-year-old discovery that you are already under contempt for not producing, you cannot have a protective order.

The next week we still don't have documents. We get two emails that day, the first one very early in the morning. Counsel wrote to us asking for consent for a motion for consolidated discovery plan. We had no interest in that. We told them, look, the court asked us to do a discovery plan, we just did it, we're now days before the hearing. We'll talk to you next week after the hearing if you want to talk about this, but we have no interest in doing a discovery plan right now.

He said he was finalizing document production which will only be produced in the Lewis matter, due to the confidentiality of certain documents. But counsel stated, You will have these documents today. We did not get those documents.

THE COURT: I'm sorry, Mr. Bankston, which of the binders has these exhibits?

MR. BANKSTON: Oh, I'm sorry, Your Honor. So, these exhibits I'm talking about right now, hearing exhibits, were uploaded to the Box last night after defendants filed their responses. So they're in --

THE COURT: Oh, so they're not in one of the binders you gave me.

MR. BANKSTON: No, unfortunately not. These are in response to --

THE COURT: Okay, that's fine, then. I just thought I would flip through as you were talking. That's okay.

MR. BANKSTON: Sure. But they are in there noted as plaintiff's hearing exhibits.

THE COURT: Okay.

MR. BANKSTON: So then later that day, or that evening, we didn't get the documents. Counsel wrote us that night and said he will be moving for a protective order in Heslin and Pozner, and that defendants intended to withhold confidential documents. And no documents were produced that day.

Then on August 26th, just a couple of days ago, at 6:00 p.m. counsel provided about 6,000 pages of supplemental production and, as promised, withheld confidential documents from both Heslin and Pozner cases, despite the fact that he has no ability to object to those cases and he's under contempt in the Heslin case.

Let's talk about what was produced in that 6,000 pages, because this is where it really starts to get interesting. The first thing that was produced was nearly 2500 pages of transcripts of InfoWars' videos, and there's a lot of reasons why this is very alarming. First of all, it might be excusable, say, if there was

2500 pages of transcripts buried somewhere in Mr. Jones's corporate files that were difficult to locate and they're just now finding them now, something like that.

The problem, Your Honor, is that these transcripts were prepared by a court reporter. These were made -- a great proportion of these transcripts were made in June and July of 2019. They had them commissioned to be made by a court reporter. That was months before they had told me in the Heslin case there were no transcripts and they didn't produce any of these transcripts. But they had them the whole time, prepared by a court reporter.

And what's shocking about that, of course, is that, much later in that case, they then attempted to argue to me that they didn't identify Mr. Heslin and that my case was deficient because I didn't have transcripts. And the entire time they had actually prepared them with a court reporter.

The other thing that's very disturbing about these transcripts is there are more transcripts than there are videos that I have been produced. And right here on the screen you'll see a list of dates. They're all titled differently, some of them have episode titles, some of them just have dates. All of these

dates are dates I don't have videos for. And these are videos that mention Sandy Hook. And they're videos that they obviously provided to a court reporter to transcribe but they never provided to me.

This is the tip of the iceberg, too, because I know about a ton of videos that aren't on this list. But it is extremely disturbing to me that these transcripts exist and these videos existed. They were never produced to me and, in fact, hidden and used to try to get Mr. Heslin's case dismissed.

The next thing that they produced is, the bulk of what they produced, is 2100 pages of Google Analytics screen shots and Excel spreadsheets. What this is is a bunch of data about entry links, keywords, search terms and exit pages for the InfoWars.com website. This is not responsive to anything in our discovery requests that are issued in this motion. None of the discovery that occurred prior to remand has anything to do with this.

There is one request we issued after remand, it's not related to this motion, that was, produce your analytics or web traffic for every video identified in plaintiff's petition. And some of the videos in plaintiff's petition have promotional pages on the InfoWars website here, but ultimately this is kind of

not really responsive to anything. I mean, there's -- buried in here is some responsive information I guess to that, but not fully responsive. But mostly this has nothing to do with what we're talking about today, we may end up talking about it later.

The next thing they gave us is there's this gentleman -- well, not a gentleman --

THE COURT: So, Mr. Bankston, is it your -- are you trying to say that they just included that to clog your review?

MR. BANKSTON: I don't want to make that representation, Your Honor. I certainly hope that's not why. I mean, him hoping that they thought it was partially responsive to a post remand request. That's -- I'm going to be charitable and say that that's what I think. Then again, Your Honor, you are right that there is thousands of pages of things that are not responsive to me. I don't need to know exit pages for InfoWars, things like that. It is very nonresponsive.

The next thing they produced to me, there's a man named Wolfgang Halbig. He's a conspiracy theorist crank who has pursued these families for years, saying Sandy Hook is fake. He's been a guest on InfoWars several times. They produced me, you know, about 600

pages of strange emails and a transcript of a town meeting he was at. Which is responsive, that's fine. I'm just saying it doesn't have anything to do with what we are asking for in this motion.

They gave us 239 pages of InfoWars articles, some high-quality scams, some from litigation. All of them were previously produced. And then there were a few other things they produced. About 150 pages of messages to the news tip email address. We already have thousands of those. I haven't been able to check yet but I'm pretty sure most of those are going to be duplicates. There are a few dozen pages from another conspiracy theorist blog named Jim Fetzer, who they've cited on occasion, a handful of emails.

There's a few dozen internal emails regarding show scheduling and topics. There's around a dozen press inquiries to InfoWars about this lawsuit. For some reason there's affidavits from Jones and Dew in March of 2019 regarding Lafferty requests. And there's David Jones's deposition transcript, which we don't understand why that's in there, either. That was an exhibit to our sanctions motion, in fact.

And there were some interesting things in there, Your Honor. This is an email actually that was produced in 2019, before remand. And this is -- what

you're looking at is an email notification sent to Rob Dew that he got a message on Twitter, a private message, and this message is three days before they defamed Mr. Heslin and it's talking about Mr. Heslin's -- the interview he had with Megyn Kelly. And we obviously can't see the full message because we don't have access to that.

But in 2021 they produced this email, which is another notification, and this is a month later, and this one is on the day of the second video that defamed Mr. Heslin. And as you can see from this message, this person is engaging in a conversation with Rob, with Mr. Dew, who is obviously responding and giving his thoughts. And they're talking more about these relevant events.

So here is -- we know that there are messages from Mr. Dew on Twitter giving their mental state of mind at the exact moment that they defamed Mr. Heslin. We don't have them because this is social media evidence. We only have these notifications to know that they exist.

We got a couple of other surprises. First we got an email from Chief Editor Paul Watson discussing the messaging application BaseCamp. And we've never heard of this messaging application in this case. This

is one of the things they were supposed to identify. And we don't know that anybody has ever accounted for this or searched this or knows anything about it.

We also got an email from Roger Stone to Alex Jones referencing Sandy Hook, and we had been told that Alex Jones doesn't use email to communicate with people. We had been told that there were no Sandy Hook conversations. But now all of a sudden there is this single email from Roger Stone about Sandy Hook. I mean, we think that's because they think that we'll eventually get that email from Roger Stone. We don't know why we're just now getting one solitary email from Alex Jones.

But most importantly let's talk about what we don't have. Discovery responses. So first -- the very first one I talked to you about, Mr. Heslin's case, we don't have discovery responses on his defamation claim. 32 pages of written discovery, we -- none of that has ever been answered. And defendants apparently seem to think they have answered it, which is strange to me, but they have not answered that. They haven't answered any discovery in Pozner. And then the discovery responses that you have from Mr. Heslin's IIED claim and Mrs. Lewis's claim have both been admitted that they're patently insufficient, but there's never been

any supplemental discovery responses.

We still don't have the most basic information about this case, even like requests for disclosures which are already due, we don't have. We don't know who has knowledge of relevant facts, what the videos are, who was involved, any of it. Documents have never been supplemented in any meaningful way. We're going to talk -- really an important one about this is the amount of emails they should have, and we'll talk about that in just a minute.

Depositions. We were owed four different deposition in Mr. Heslin' case that we have never gotten. And one of those -- actually a couple of those are pretty important because, for instance, we were supposed to have the deposition of Owen Shroyer, and we haven't had that in three years. And the problem with that is Mr. Shroyer was just arrested on federal indictment for insurrection activities on January 6th. And so we're not sure if we're ever going to have an opportunity to depose him.

And, in fact, in Mr. Shroyer's arrest affidavit, in all the pictures of him breaking the law where he's not supposed to be, Mr. Jones is standing right next to him. So we have a strong suspicion that Mr. Jones is about to face federal indictment, as well,

and arrest. But we're not sure we're ever going to get those depositions.

The videos have never been supplemented. And as we see now they have videos that I don't have and there are videos out there they should have; and if they were to go through their own documents they would know about tons of more videos and they have not done any reasonable good faith effort to get us those. And we don't have social media evidence and that's all gone now, too. You've seen that talked in about our brief quite a lot.

And who knows what else. This is really the important part is that, when there was a promise made to supplement this discovery, it was because discovery had been so badly bumped for a year, waiting another two years wasn't gonna do it. I mean, now we're talking about having to go find people three years out from where we would have normally done it, to see who was involved in this case, who might still have documents, do they still even have them. You know, the quality of the evidence, of people's memories and the physical evidence, all degrades. And we have now been kept from discovering any of the basic facts of our case for three years. We don't know what else is out there.

For instance, thank gosh that Robert Jacobson, their video editor at one point, decided to approach us and say he felt bad about what happened and needed to testify. We don't know who else is out there. We don't know what other information.

Let's talk now, Your Honor, about these responses. And I definitely agree with you that, filing these responses last night, um, or actually I believe they filed them while you were in trial this last afternoon and I was in deposition, and then when we got out we would have had to have been expected to drop everything we were doing and read these last night. And I know you didn't, but I did. I had my wife take care of my kid and spent all night dealing with these.

These responses further show defendant's utter conscious disregard for these cases. They're really quite amazing. So I want to talk a little bit about what was said in these responses because you haven't gotten a chance to read them yet. So this will be your first look.

First there is the Pozner response I want to talk about, and they just in flatly admit that they have not responded to discovery, they do not dispute that at all. They say, the undersigned had the

misunderstanding that plaintiff's discovery requests had already been responded to. They say that when plaintiffs's counsel emailed regarding the responses to plaintiff's discovery requests, the undersigned failed to recognize that these outstanding discovery requests had not actually been responded to.

This is very strange, Your Honor. Because if you look at their sole exhibit to their motion, to their response, is their -- Exhibit 1 is the July 2nd email. And you'll notice at the bottom of the email is my first email on that one. And I lay out to them on every case exactly what's wrong and what they need to do. And in Pozner it's very simple. I told them, regarding that case, your clients have not responded to plaintiff's initial discovery requests. Those responses were due on September 1st, 2018. When the appeal was initiated the responses were almost two weeks overdue. Upon remand you have made no efforts to respond. Now, the requests are nearly a month and a half overdue. And now they're three and a half months overdue.

THE COURT: I'm just going to, because I can't help it, point out that, while I appreciate you taking the time and effort to lay out what they have not responded to yet, that was not your obligation.

You filed the discovery and it is their obligation to keep track of what they have responded or not.

MR. BANKSTON: I would agree with you, Your Honor. I definitely agree. But, this is an unusual case and I sometimes have to do the lifting for both sides in order for anything to make sense. And so --

THE COURT: Well, I appreciate it. I just wanted to be clear that that was not in any way your obligation.

MR. BANKSTON: Thank you, Your Honor.

But again, you know, Your Honor, it's interesting, I'm right with you there, but one thing I wanted to make sure and do was to put this out there as clear as possible so that we could demonstrate their absolute conscious disregard. So.

And one place I did that again was the July 9th oral hearing. I reminded them that no response has been served. I told them they needed to file a motion to undeem the admissions. And they didn't do that.

A whole month, the rest of that month passed, and then on July 27th on the motion for sanctions all of the above was summarized: That they had never responded to the discovery request; that all of this had happened in oral hearing, that I reminded them to

file the motion to withdraw the admissions. They didn't do any of it. None of -- they just ignored it. A complete, conscious disregard.

August 30th they filed a defamation response in Mr. Heslin's case. Let's talk about that one really quick. This one is also astonishing, Your Honor. They say, the motion fails to provide any pointed explanation as to what alleged discovery abuses by defendants are ongoing which would warrant a contempt finding beyond making the nebulous, conclusory claims that defendants have failed to adhere to their discovery obligations.

Defendants have never responded to the August 31st discovery order. That is 30 page of written discovery. That is four depositions that they were supposed to give that they first told the court, you don't have authority to make us do this. Then they launched an appeal with no jurisdiction. Then they came back, refused to respond, and the court held them in contempt and fined them $25,000.

Then they appealed again, launched a frivolous appeal for which they were sanctioned, came back, and still have never responded to these discovery requests. And now they have the temerity to tell this court that I'm being vexatious and that there is no way

they could possibly know what they would have to do to comply with this order. They've never responded.

On Heslin contempt Exhibit 10, on July 2nd there's that email that I sent them that we just talked about. And they were reminded that they never responded. In very clear language I laid out this exact situation, how in 2018 they chose not to respond; in 2019, they again continued not to respond; and how now, where are the responses, why have they not responded. Defendants now claim that, hey, how would they ever know what to do.

It's frankly, Your Honor, the disregard to respond to a second contempt motion in this way, to not even know that you haven't answered the discovery, when I have provided you that -- I sent them the -- the order has it all set out. And these are orders of the court. It's frankly just baffling to me, Your Honor. Also, this is conscious disregard.

Let's talk about -- my screen popped up, there we are. All right.

Let's talk about Lewis really quick. That response they cared -- they say that the plaintiff characterizes the Lewis production as largely containing nonresponsive materials. Plaintiff truly makes no effort to provide evidentiary support for this

allegation.

If you look at Lewis contempt Exhibit 5, it is a copy of our April 2nd, 2019, Lewis reply on motion for sanctions. You'll remember, that motion was filed when they had produced nothing and then after the motion was filed on the eve of the hearing they did this document dump. That reply goes into extreme detail, sets out how the production was deficient and nonresponsive, gives example documents. It contains a declaration from our expert, who was helping us review it, who describes what an incredible mess it was. So, from our standpoint, yes, we absolutely have provided support for that.

But more importantly, this is sort of just relitigating things that were already decided in 2019. Because they say, for instance, that the Lewis motion does not show how defendants have failed to comply with such orders and how, when, and by what means defendants have abused the discovery process. But they admitted in that hearing that the Lewis production was inadequate. They agreed to pay attorneys fees. They totally understood what a mess they made of the situation and promised to fix it. And, in fact, right after that their other attorney said that discovery situation was a mess and a short time after that they

ended up producing child pornography.

We all know that the Lewis production is in no way adequate, but they don't seem to want to supplement their answers in any way.

Let's talk about the Heslin IIED response now. They say that plaintiff's supplemental brief is nothing more than a veiled attempt to have this court reconsider that ruling and implement additional sanctions when that situation has already been addressed. And, Your Honor, I think we both know that that is a flat misreading of the court's order and the transcript, where this court definitely was in the mindset that, if this discovery was not supplemented as Mr. Jefferies promised, that additional sanctions would be considered. And that he was expressly holding this off to let you decide how to deal with all this situation.

They talk about the document situation. I want to address this really well, too. Because they say that, what plaintiff conveniently omits from his briefing is that the scope of discovery in Lafferty is much wider and all-encompassing than the discovery at issue in this case. For example, plaintiff sites to an affidavit of David Jones filed in the Lafferty matter that search terms in that case yielded approximately

80,000 emails that were potentially responsive to the Lafferty plaintiff's discovery request, but in no way does that support the idea that those emails are responsive to this plaintiff's limited discovery request.

Your Honor, if you'll actually look at that affidavit that's in our response, what Mr. Jones said is that searching for the terms "Sandy Hook" in emails returned nearly 80,000 emails and that they expected similar volumes for other search terms in the Lafferty plaintiff's request.

We've obviously requested all emails with Sandy Hook in them. We have about 11,000 total documents in this case and I would just give you a rough estimate of about half of them contain the term "Sandy Hook" in them. So we're not anywhere close to that universe. And most of those emails we have, a good portion of it, Your Honor, is the same 15 people who are writing InfoWars unsolicited, and they are extremely mentally ill and writing 500-page emails to InfoWars on a weekly basis. And it's these same ten people over and over again. So what we're seeing here is not in any way a search of this.

We also took the deposition of Michael Zimmerman, who is like a 23-year old IT employee at

InfoWars who emailed some of this. And he confirmed for us in this case, David Jones's testimony, that there should be 80,000 emails relating to Sandy Hook.

Now, they also talk about messaging systems in their response. They say that Free Speech Systems utilized Slack as a messaging system, but that system has not been utilized since April 2016 and that data has been preserved and to the undersigned's best knowledge has been produced.

I don't know what this undersign's best knowledge is, because he doesn't have that knowledge. I mean, this is just -- he's copying and pasting something from 2019 or something, I don't know. I don't think anybody has everybody alleged this Slack data has been preserved or produced. We have testimony on our records showing -- in our motion showing that Slack data has not been preserved and is not available anymore. If it is available, we have notifications from emails that show that Sandy Hook was discussed in the Slack system, so there should be those messages. Those haven't been produced.

The same deal with this Rocket.Chat makes the exact same statement. And we don't have any Rocket.Chat production. None. And we don't have any indication that that's been preserved. You'll also

notice there's a gap between 2016 and 2018. They don't say what messaging system they were using at that point, but we know that that exists, too, and none of this has been accounted for.

This stuff about the undersign's best knowledge, you're going to see this a lot in this case. This is because Mr. Reeves is not getting any cooperation from his client. So the undersign's best knowledge is just a guess on his part.

MR. REEVES: Your Honor, I would object to that because he doesn't know what I'm talking about. I mean, I can understand that he's frustrated here, but he doesn't need to be opining on what I'm saying. I can certainly discuss it with you, but I object to that statement there.

THE COURT: Well, you can object to it but I can also read and make a conclusion about what that statement means.

MR. REEVES: I understand, Your Honor. I'm just -- what I --

THE COURT: What it means is you don't know. You don't have any idea. Because if you knew you would say so.

Go ahead, Mr. Bankston.

MR. BANKSTON: Okay. The other thing that

the IIED response from them last night addresses is videos. It says, while plaintiff's briefing addresses a couple of videos he says have not been produced by defendants, plaintiff notably does not provide any information to the court as how such videos are in any way relevant or connected to his IIED claims in this case.

And, Your Honor, this is so ridiculous. Because if a video is about Sandy Hook, it's obviously relevant. I mean, we're alleging a continuing course of conduct here. The other thing that's ridiculous about this is, when you're already under contempt for not producing it, the idea that it's not relevant is not a great argument at this point. This is obviously directly connected to my case.

It's also way more than a couple of videos. We identified about six in that brief right there, we've given them a list with others they haven't produced, and we know there's ones they have they haven't given us. No effort has ever been made to answer even the most basic interrogatory about what videos exist.

Then there's social media evidence. Their excuse here, you saw in our motion how they had every opportunity in the world to preserve this, they knew

that it was about to be deleted, they got every thread over a course of months. And they said it's our problem because we haven't given third party subpoenas to any of the social media companies. And the problem here is during the first period of this case up until this remand I was under discovery stays where I could only have the expedited discovery against the defendants that was granted by the court. I couldn't just go out and do discovery.

But more importantly, if they have a superior right of access to this, these are their accounts and they can get them much easier from FaceBook or Twitter than I can. This would be like if I was saying, well, you know, I have medical records but I'm not going to try to get them for you, you gotta go get them. This is -- in this situation I have no reason whatsoever that Facebook, Twitter, or YouTube is going to comply with me in any way. But they have to make a reasonable effort to get things that are within their custody and control, and they haven't tried to do that at all.

The other thing that is said in this response is that the undersigned counsel was not involved in those disputes but certainly has reviewed the record and understands where the issues were alleged to exist and what has been done to try to remedy those discovery

disputes. The undersigned has been personally reviewing over 75,000 documents gathered during this litigation.

Your Honor, respectfully, from what you've seen today, this not true. Mr. Reeves does not understand where the issues were alleged to have existed. He believes he's responded to discovery he's never even responded to. Which tells you something, Your Honor, which tells you that he has never checked to see in holding his hands the discovery responses that have been issued in this case.

In other words, he is telling you in a contempt motion that there is wild, spurious accusations against them that should never be granted and they're in compliance because they have responded, and he told you that without ever laying his hands on the discovery responses to see if they were compliant. Because if he had tried he would realize there are none. And so to then say he understands what issues are alleged to exist, no, he doesn't. And they have not tried to remedy those discovery disputes. They tried to do some eleventh-hour figgely before they produced us 6,000 papers of mostly useless documents.

He also says the undersigned has been reviewing all those 75,000 pages? They surely didn't

even have those until at least August 11th, when they told us they didn't have them and they wanted us to give them to them. I'm not even sure I totally believe right now that they do have them. I think maybe they kind of got embarrassed and said, no, no, okay, we're okay, don't give us the documents.

So the idea that since August 11th, with the other briefing the defendants have done, with the other briefing I know Mr. Reeves has done in another court with me, there's no way since August 11th you've reviewed 75,000 pages of documents. I did that, I remembered doing that. I couldn't have done it in that period of time even with nothing else going on.

There's also a response made about the pattern of conduct in this case. Defendants say that none of the cases cited by plaintiff, the vast majority of which are non Texas cases, support the position that the court can consider alleged discovery violations in entirely separate matters. I mean, that's just not true. First of all, look at page 42, that's *Caron v. Smaby*, and that's where you had conduct, and this is from my home district, where it was in one court of the district in Harris County but there was also discovery abuse previously in another district court of that county. We'll talk about some other cases like that.

In fact, that's a good place to transition right now to talk about the legal principles.

THE COURT: Let's take a little break, then.

MR. BANKSTON: That's great, that's great, Your Honor.

THE COURT: Yeah. So let's take like a 15-minute break. We'll come back at 10:30. My assistant will put up a break sign, but if you don't want whatever you're doing on break visible or audible on YouTube, you need to turn your camera and your sound off. Okay?

MR. BANKSTON: All right, Your Honor.

THE COURT: See you at 10:30.

MR. BANKSTON: Okay.

(Brief recess.)

THE COURT: All right. Welcome back.

Mr. Bankston. You can pick back up.

MR. BANKSTON: All right. I think I only have like ten or fifteen more minutes with you, hopefully.

THE COURT: All right.

MR. BANKSTON: Okay. Y'all got that in front of you?

THE COURT: But it's not the -- it's the wrong screen again.

MR. BANKSTON: I'll get that taken care of. Screen number two. There we go.

All right. Are we looking good now?

THE COURT: Yes.

MR. BANKSTON: Okay. So, we just wrapped up talking about the responses that were filed yesterday. I did also want to add on that, um, to kind of follow back up on your comments about that, you know, staff attorney Mr. Denton had sent us out a chart of everything for this hearing to get us ready and had asked us, sort of as a convenience, you know, when we were scheduled on August 17th, you know, can you please get me copies, paper copies, of all relevant pleadings by the 6th.

That following week defendants had contacted the court and said, hey, we didn't know that necessarily applied to us. We're going to file our response tomorrow, on the 10th. And at that time Mr. Denton said, you know, look, hey, this is just to try to be a guideline, there's no court order here setting a deadline. But the judge would like you to get your pleadings in as soon as you can so she has plenty of time to review them. And that was back on the 10th. And they went ahead and just sat on those until the night before the hearing.

And I do feel like that was done in a calculated way so that there would be no time to reply to that, there would be no time to look at that. Luckily, I did have time last night to throw everything to the sidelines and dive into those. But we actually believe that their failure to address these motions that have been pending for quite some time and are quite serious and the gravity of them, their failure to really respond to those, to us, speaks to the conscious disregard.

THE COURT: I agree with you and I want to make it clear that in all cases in front of me, Mr. Reeves, whether they involve Alex Jones or another party, from now on, when you are the attorney, I'm going to set deadlines for when everything is due. And particularly in these cases. And if they're late, I'm not going to consider them.

MR. REEVES: And I understand. And there was no gamesmanship, Your Honor, there was simply --

THE COURT: Hard to believe. It's hard to believe.

MR. REEVES: I understand that, Your Honor. But I can tell you for me personally there was no gamesmanship for me. But I understand what you're going to do and I can appreciate that and I'll make

sure that we meet whatever deadlines the court sets.

THE COURT: Which I shouldn't have to do, and I don't in almost any case.

All right.

MR. BANKSTON: Let's move on to legal principles underlying this motion. And as you know, these are -- it's interesting, because they're all essentially motions under 215, right, we're talking about discovery abuse and the powers available to you when a party is engaged in this kind of years of discovery abuse.

The first principle that we talked about -- first principle we talked about in our motion on page 40 is that persistent discovery abuse justifies presumption that a defense lacks merit. And when the court can reach a presumption that the defense lacks merit, default sanctions can be granted. The court in doing so must only consider, and not test, lesser sanctions.

Obviously in this case -- in these cases the court has tested all sorts of sanctions. It's interesting, though, that InfoWars' argument is essentially going to be, because we have only been sanctioned once in each case, or because there's only been discovery violations once each case, you can't

consider what's happened in the past, you've just got to keep on giving us the lower sanction each and every time we do something in your court.

This isn't the law, though. Because, as we point out on page 41, the trial court may consider action taken in another court when that action is relevant to the case pending before the trial court. And in here it's not even really another court really so much, because so much of this already happened in your court. Defendants want to say in their response that this sort of law only applies when the same lawsuit has been transferred between courts but you can't consider anything else. And that's just flatly not true.

Not only have we talked about the case of *Caron* earlier, but I actually think *Zenergy* is maybe the most important case for you to look at in this dispute. We put that into the Box and highlighted it for you. *Zenergy* is so factually similar here but far less egregious. *Zenergy* was a corporate dispute where both parties sued each other and in that case the defendants did not provide discovery. They -- and it wasn't nearly as far ranging as ours, but there was certain information that defendants did not provide.

They had also moved for summary judgment at

the same time, which is dispositive in much the same way a TCPA motion is. It was discovered that they had hid discovery, didn't fully comply, so there was a sanctions hearing held.

And then at that sanctions hearing the court didn't take action, much like in this case. The court said, well, there's going to be a stay of proceedings for a little while in this case, so we're going to hold off on making a ruling now. The stay went for a year and then, upon a year, when they came back from the stay, the judge noted, well, Zenergy hasn't done anything to respond to these requests, even though they've known for a year that default sanctions could be imminent and they haven't done anything to get that information in front of the court.

There had never been any prior discovery abuse in *Zenergy*. But what happened is that the judge in that case noted that two of the three same defendants had committed discovery abuse in a previous case. It's unclear from *Zenergy* whether that was even a state case, that might have been a federal case. But it was a previous similar lawsuit involving Zenergy in which they had conducted -- had been sanctioned for similar discovery abuse.

The judge in that case said, well,

considering this prior conduct, I can assume that my sanctions here are not going to be effective. So that's why a default was granted.

When it was reviewed by the Corpus Christi court they said he was entirely proper to do that because he could rely on the fact that they had been sanctioned by the same conduct before; and that they had repeated it in front of this next judge, that judge did not have any confidence that his sanctions are going to change their behavior. So in *Zenergy*, under much less worse facts, a default was granted.

There's also, we also need to talk a little bit about, the defendant's bad faith. Defendants are correct that simply bad faith or things you do outside the litigation are not an independent basis for sanctions under 215. But once the court determines that 215 sanctions are appropriate and it starts to consider whether -- what kind of sanctions would be effective, it is absolutely allowed to consider defendant's bad faith approach to the litigation in general.

And one of those first things you can talk about is, I know the video that we played earlier didn't really have volume to it so I may need to play that at the very end of this presentation again, but

you would see from that video Jones has created a hostile atmosphere, and it will discourage people from participating in litigation. He has shown an abject disrespect for this proceedings and the safety of everybody involved.

As you may know from the briefing, right after that video, the judge in Connecticut started getting death threats that the F.B.I. warned her about. The plaintiff's counsel did up there, they actually got police to guard their office. My wife got a message on her phone after Mr. Jones called me a gremlin and a goblin who was terrorizing InfoWars' audience and he asked them to stand up. He does this. He has no problem creating that atmosphere.

He also is obsessed with this idea that there is a conspiracy that has made these trials show trials and that there are powerful forces in the democratic party, headed by Hillary Clinton, who apparently control us, who are causing him to become railroaded.

He has called Judge Jenkins a hoodwinked mainline liberal who is being manipulated. He has openly called these lawsuits show trials. And there's a really good understanding, when you see his conduct of that nature, why he's not participating in discovery and why these sanctions are not effective.

The defendant's conduct here was egregious, and what I want to really emphasize is how the courts frequently default parties for so much less than this. If we look, for instance, at *Alma Investments*, this was a lawsuit about some condo developments in South Padre Island, multimillion dollar lawsuits, where the companies were suing each other.

In that case there were two failures to appear at deposition and a failure to deposit funds in the registry. They said the court twice ordered the Pakidehs to appear for depositions but both orders were not followed. Additionally, the trial court ordered Alma, the company, to deposit $20,000 in the registry of the court to pay an auditor. That's all that happened and those parties lost their ability to defend their claim.

And I think you would have to look at that situation and think about the Pakidehs and think, if they were denied the ability to put on their case but Mr. Jones in what he did is going to put on his case? And I think you would have to understand that the Pakidehs would think that was very unfair.

The same thing would be true in *Salomon v. Lesay*. There there were just three failures to appear at deposition, and one of them occurred after a

monetary sanction of a thousand dollars. Which is far less egregious us than what's happened here, with numerous depositions missed, numerous monetary sanctions, numerous cases where they are not responding to discovery and where they're across the board obstructing every other discovery.

Here again you would look at somebody like Michel Salomon and what would he think to know that he was kicked out of his case but Mr. Jones is going to keep going in his. I think that would be the reaction basically across the state is that if the people were to see what has happened here and then see Mr. Jones continue, they're -- the reaction would be Alex Jones got away with what? And that has really been the jaw-dropping reaction of everybody who has seen this case.

The other thing I want to remind the court is that discovery affects all aspects of these cases. And I've put down here the three elements that we're going to have to prove, for instance, in our defamation cases. And the reason is is because, one of the things the court might be inclined to do in a situation like this, is to pursue a lesser sanction of saying, I'm going to make an evidentiary finding on a certain issue in the case that discovery affected. Something less

than a default.

Well, here I want to go over these elements, right, and how every single one of them has been blocked by discovery.

First there is published. And we know that there's a dispute over who published what, as you remember from our last hearings, whether InfoWars, LLC was involved, from the discovery there, and we've been just absolutely obstructed discovery on InfoWars, LLC.

We have to prove it's a false statement. And obviously whether the statements are false can be proven with discovery from the defendant, because there's a good chance that they're going to give us discovery that they knew it was false.

We also need to prove it was a statement of fact and not an opinion. But if defendants are relying on the idea that they were simply analyzing certain disclosed facts and giving their opinion based on those disclosed facts, if we discover evidence that they knew that those facts were false, then they are not entitled to express that opinion and they do not get that defense.

Furthermore, prior statements of the defendant may, in fact, change the meaning of the actual statements in the challenge. So for a lot of

reasons discovery is important to opinion cases.

Then we also have whether it's about the plaintiff. Image with me that InfoWars has a document saying, ha, ha, ha, this new broadcast we're going to do is really going to mess over Lenny Pozner's life. It would be very difficult for them to come back and say then, nobody can possibly interpret that video as being about Lenny Pozner. That impeachment evidence could be critical.

The idea that the statement caused the plaintiff reputational harm is my next element. And honestly, that one is not really important here because these are per se cases. So there's the presumption that the plaintiff is caused harm. But even still, there's clearly we can get evidence of reputational harm from the defendant's discovery.

And finally, that defendants acted with the required fault. And this one here is pretty obvious to me, too, because everything under the sun that they could produce to us could possibly go to their fault.

So those, if all of those are the issues, if any of those are left intact, we are actually still suffering prejudice from this discovery in the fact that it's been absolutely botched and will never be fixed,

The last thing that defendant's counsel leaves you with is his plea, right? He says to you this plea, that the undersigned requests that the court grant him an opportunity to prove that he has control of this discovery situation. Well, with respect, he has already had that opportunity and he has thoroughly proven that he does not have control of this discovery situation. Doesn't even understand the discovery situation, much less have control over it.

But what's really interesting to me is that this is the exact same plea given to this court to avoid default sanctions in 2019. This is exactly the same thing that Mr. Jefferies said to this court and how much time he had put in to getting an understanding of what's going on and they were going to get this fixed. The exact same excuse. And what's even more ironic is that was also the same excuse used by the lawyer before him. And the lawyer before him. And the lawyer before him.

It just keeps going, Your Honor. It's like that movie "Groundhog's Day" with Bill Murray. And I remember him saying this line: One day I went to Mexico and had a great vacation down there. I spent a whole day on the beach, drank pina coladas. Why couldn't I have that day over and over and over again.

And we really have been stuck in the same situation.

So to hear this defense counsel make this exact same plea, after having just completely trashed the entire summer, remember that defendant's counsel came to this court and negotiated and agreed for a discovery plan that has me designating experts in about 14 days, and I don't have any discovery to do that. That's not going to stop me, I'm still going to designate my experts, because we realize we've gotten all the discovery we're ever going to get. There's never ever going to be a fix to this problem.

There is a reason, you might wonder and it kind of starts to make sense, why every single counsel comes to you and makes the same plea and why no counsel can ever get control of the discovery situation. It's because of this man. We've told you this in our brief. We set this very clearly. There's a reason why no sanctions have ever been effective at changing this man's behavior.

He will continue to introduce chaos, defiance and danger into this lawsuit, because it is built straight into his DNA. We have had all of these different lawyers and it has been -- one thing that has remained consistent is Mr. Jones' complete disregard for these proceedings and, in fact, his open attacks on

these proceedings.

And it's really for that reason, Your Honor, is that we now have given you proposed orders on all the cases, and the discovery abuse has gotten so bad these last three months, the conscious disregard is so shocking, that we are asking for a default judgment in all four cases. Because in every single case you have a long history of discovery abuse you can rely on to show you that anything you try to do right now to compel compliance is not going to work.

Your Honor, so that is what we are requesting. We have added proposed orders to the Box.

There is one other thing I would like to do, I've been let known that during the playing of this first video that we're looking at a screen shot right now, Your Honor, that the sound wasn't working so it wasn't able to be heard. It's a two-minute video and I do think it's important for the court to hear what is heard, so if it's okay with you I would like to close by playing that two-minute video.

THE COURT: All right. I heard most of it but that's okay, you can play it again.

MR. BANKSTON: Okay. I just figure for two minutes it's probably not the worst way to end.

All right, Your Honor, here we go.

THE COURT: And this is Exhibit 1.

MR. BANKSTON: Correct, Plaintiff's Hearing Exhibit 1. And this is the broadcast that was made after the discovery of child pornography in Lafferty.

Again for the audience who is watching on the live stream, this is extremely not safe for work, there is a lot of profanity, so I do want to give you that warning before I start.

(Videotape played off the record.)

MR. BANKSTON: All right, Your Honor, as closing let me just say the person you saw there at the end of that video was Norman Pattis. He's a local counsel for Mr. Jones in Connecticut. And the pattern that you see in this case, and I see it over and over and over, is that they select some local counsel, who comes in and takes these, falls on the sword, and it's always a new local counsel that they throw under the bus every single time.

And really what the elephant in the room is is the elephant that's not in the room right now, which is Mr. Randazza, and that he has now told you in his briefing that he has actually really been InfoWars' corporate counsel, coordinating the litigation from all over. And that seems to be accurate. And you have a party who is non-appearing, a person who is

non-appearing attorney, who's acting as corporate counsel. He's general counsel. He's essentially the party. He is their corporate lawyer.

And you have these attorneys who come in who are put in these awkward positions, like you can see Mr. Pattis really found himself in an awkward position there. And each of these attorneys will then come and the next local counsel will blame it on the local counsel before. And so here we have Mr. Reeves again, who is the latest series in that, and I'm expecting, just like Mr. Jefferies, he will blame the one before him. But what you'll see is the consistent behavior of party itself. And that is the reason why we think anything more at this point just becomes ridiculous.

So what we're asking is the default judgment and to let a trial proceed forward just on whether Jones' conduct merits punitive damages; what the compensatory damages are; and, if there is a punitive damages finding, what the punitive damages should be. And that's what we're asking for today, Your Honor.

THE COURT: So, I printed out your proposed orders. I haven't read them yet because I didn't know they were there until this morning.

My concern is you need this discovery even for a damages trial. So, are you asking me to default

THE COURT: Okay. You might want more, let's put it that way.

MR. BANKSTON: I do. Exactly. Correct, Your Honor.

THE COURT: Okay. But your position is you'll file that later.

MR. BANKSTON: Right.

Right, if we need -- if, for instance, after this hearing and I have more of an understanding of what the scope of discovery is like going forward, then we'll serve new discovery requests and depositions that we may need. I think that would be very limited.

THE COURT: Okay. All right. Thank you.

Mr. Reeves.

MR. REEVES: Okay. Thank you, Your Honor.

You know, Mr. Bankston, he kind of merged everything together and I feel like, for at least my purposes, the best way to approach this is individually with each motion so that we can make sure that we have, you know, a clear understanding of each particular motion, what is requested here.

The first thing I want to say is that, you know, the statement at the very end where he pulled out where I asked you to give me basically a chance to deal with the discovery issue is from a brief in Pozner,

liability and order the discovery still be responded to again?

MR. BANKSTON: It's interesting. I do think you're right, that there will need to be some damages discovery from therein that's directed towards them. I don't honestly think it's ever -- I'm going to get much. And I don't -- let me put it this way, I don't think the discovery that was, um, issued under the court's prior discovery orders, which was TCPA-directed discovery, all that goes to my burdens. So I don't think we've served any discovery yet that would be subject to these orders that would be damage related.

Certainly if we go forward and there's something going on with damages that we need to bring to the court, you know, for -- we could have that. But I'm just kind of hoping that we can go forward and at least put on a damages trial, even if they don't produce us anything.

THE COURT: Right. I mean you can, but my question is just, if you're trying to get punitive damages, you probably do need more discovery.

MR. BANKSTON: I think that's true.

Well, I'm going to tell you, Your Honor, I think I have enough to prove punitive damages right now. I do.

whereas my response states, frankly, when the -- he sent me about a page-long email and when I was reviewing this I was in the midst of preparing for trial with Judge Meachum and everything, and my, frankly, misunderstanding was that every discovery request issue was in the same posture. As far as dealing with TCPA discovery, frankly, you know what, I'm falling on my sword because this is my lack of understanding. I'm not blaming any prior counsel --

THE COURT: I mean, I've been on this case for a few months and you're now the second InfoWars lawyer to come in and claim responsibility for discovery problems. I've only been on the case a few months.

MR. REEVES: And I understand that.

THE COURT: And I just, before you get too far into this argument, you can make it, but know, I know you know, and I want to make it clear that I know, that you're responsible for whatever any lawyer who came before you did. You had a choice about accepting this representation. You accepted it. Your schedule and the attorneys before you are not my problem.

MR. REEVES: And I understand that, Your Honor. And I am not blaming, I'm putting it in context.

Regardless of what anyone has said in the past I have no desire to lay any blame on prior counsel. I have appeared here, I'm lead counsel here. I know Mr. Bankston spoke about Mr. Randazza because of the fact this pro hac vice is pending and has not been approved by this court, Mr. Randazza frankly has not been involved in these cases because we want to keep -- I, personally, want to ensure that we are not having someone practice in these cases where they're not admitted to practice.

So I recognize Mr. Bankston has said that, but I'm letting the court know I am the one dealing with these things. I am the one that's been brought in to try to get everything under control here discovery-wise.

The first, you know, the biggest motion -- first of all, plaintiff has now said that they want a default in all four cases. You know, that's not something that's been requested in anything except the one Heslin IIED claim, so I would say that that's not requested relief that's on the board here.

But regarding the, you know, the Heslin, the Lewis, those two cases, um, the biggest issues that I want to point out to the court context-wise about the discovery that's at issue, is that every case that

plaintiff has cited for support of their motion for their default judgment sanctions has to deal with discovery that is issued in the pendency of the regular litigation merits-based discovery. Discovery that's at issue here in those cases is only the specific and limited discovery that was allowed by Judge Jenkins that was relevant to the TCPA motion to dismiss. It wasn't merits-based discovery.

You know, obviously there is some overlap between what would be merits-based versus issues dealing with the TCPA motion, but that's not the full -- that discovery doesn't have anything to do with the underlying merits of the claims. And so that's why we believe that it's -- it would be, you know, it would be extremely excessive to enter a default judgment on discovery that's only supposed to be limited and relevant to the motion to dismiss under the TCPA.

Secondly, related to the discovery, um, I am personally reviewing 75,000 different documents to determine what's responsive. Mr. Bankston has received 6,000 of those. There's still more for me to go. I'm going as fast as I humanly possibly can. And I recognize he's entitled to this discovery. Um, and, frankly, the only other thing I want to point out about the discovery and the status of it was, when I sent him

an email asking him to tell me what had been produced, I had incorrectly done the search on this database to determine what had been produced. And what he didn't tell you was, ten minutes after I sent him that email, I sent him one back saying, I have it, I'm sorry, thank you for being accommodating to me but I have it.

So I know what's been produced. I know -- so I know what's been produced, what's out there.

But as far as the Heslin motion for default judgment, there's simply no basis legally, there's no caselaw cited, there's no caselaw that I could find that talks about granting a merits-based sanction based solely on limited discovery allowed under the TCPA. It's only supposed to be relevant to the motion itself. And so, you know, that would be the main argument against why there would be sanctions involved here.

In addition, as, you know, counsel recognized, I've already worked to supplement production, I'm continuing to work with that. I've been working with my client to get -- these interrogatories are not simple. He says that they ask for simple information. They are not simple. InfoWars is a, you know, they have a lot of employees, they have a lot of different people involved. It requires me to get a lot of different information that I'm gathering

to fully respond to these because, as an officer of the court, I recognize that there are objections that have been waived due to not responding to things like that, so I need to give him full and complete answers. And so, you know, that's what I am trying to do.

And, you know, Mr. Bankston, he likes to file his motions for sanctions, and I understand he feels the need to aggressively pursue his case; but, you know, there's just been a lot of things stated today that are just incorrect or flat-out misrepresentations to the court. You know, first of all, the video that Mr. Bankston just played, you know, I don't know if you noticed but that video was spliced together from different clips.

The stuff about the million dollars related to this child porn thing, that was when Mr. Jones was talking about figuring out -- trying to find out who had, you know, potentially done this or put this in here. There was no accusation from them that the plaintiff's counsel had done it. Those are just kind of meshed together.

You know, and there's other things about -- Mr. Bankston mentioned missed depositions. I don't have any understanding of what depositions have been missed. I recognize that there have been some

corporate rep. depositions for the TCPA motion to dismiss that Mr. Bankston was unhappy about the answers, and he brought those to Judge Jenkins's attention and Judge Jenkins entered an order of contempt and a $500 fine on that.

But there's been no missed depositions. I haven't received any requests for additional depositions. There's been no pushback from me on him saying he's not entitled to depositions. So I don't know where that comes from.

You know, and the last thing about this filing that occurred in the midst of a deposition, Mr. Pattis, who filed that thing in Connecticut, first of all, he didn't identify the plaintiff, he didn't actually provide quotes to transcription of the statements, but he wasn't even in the deposition, that was kind of his thing that he did, he wasn't even the one doing that.

But more importantly, I had nothing to do --

THE COURT: You just said he wasn't -- that was his thing that he did, he didn't even do that. That's literally what just came out of your mouth.

MR. REEVES: No, I'm sorry, I didn't mean that.

He -- he did not -- Mr. Pattis was not taking the deposition. He did not file the motion as he was taking the deposition. Another lawyer for the defendants was taking the deposition and he just, in the midst of this, filed it. And that was, you know. But he didn't actually do anything as far as identifying the plaintiff or anything like that.

But really overall, the overarching point here is that there's nothing in Connecticut that has anything to do with these cases as far as the discovery is concerned. I know Mr. Bankston wants to draw corollaries between them, but the discovery stuff that is at issue in Connecticut is far broader, far more encompassing than the discovery issue here. And so it's not a one-to-one correlation to what's there versus what should be here.

Mr. Bankston also fails to mention that there's also a Virginia case where there has been no discovery issues because, frankly, Mr. Randazza is part of that case now and discovery has proceeded orderly there. There's no issues there. There's been some slight disagreements, but there's been none of this -- you know, Connecticut and here, there's a lot of puff up over discovery, lots of motions for sanctions and lots of issues there, but that's, you know.

Again, I can't -- I'm here to live in the

present and to take what's here and to move forward and to address the problems. I have already attempted to do that by supplementing the production, I'm working to do that even more, with more production. I'm working as diligently as I can to do that.

I just believe that, especially related to the request for default sanctions, that that would be hugely excessive, considering where we stand in these cases as far as procedurally speaking, and the fact that the discovery issue is this TCPA issue, it's not merits-based discovery.

That's -- unless you would like to ask me questions about the default motion I can move onto the other ones.

THE COURT: Okay.

MR. REEVES: Okay. So, regarding the two motions for contempt, they're essentially verbatim. You know, again I have produced supplemental document production. Um, I have already -- and, you know, and again these are not -- these are not questions that I, as lawyer, can answer. These interrogatories. They ask for a lot of identifying information.

And, you know, Mr. Bankston wants to opine that I don't have any, you know, control or contact with my client or anything like that. I do. And I'm

working on it. But it's not just I can talk to Mr. Jones and get all this information. He doesn't know a lot of these answers relating to the corporate as far as involvement of who is doing what and things like that within Free Speech Systems. That requires me to speak to other individuals, which I am also doing and getting information, like I said, because what I'm trying to do is give him full, complete, responsive discovery responses so that we are done with these issues and he can move on to finding other issues.

I don't want to be in a situation where I give him half of the stuff and then he comes back to the court again and stuff like that. And I also recognize that he's entitled to it. And if he wants to move his expert designation deadline back because of this, I'm agreeable to that. I, you know, like I said, I'm here living in the present trying to solve the problems that do exist. And I recognize they exist. I just don't --

And, you know, as far as the contempt motions are concerned, from a, you know, purely procedural standpoint, it's unclear whether the plaintiff is seeking criminal or civil contempt findings. If they are criminal contempt findings that they're seeking, that would require actual notice and service upon the

defendants themselves, not just through their attorney. Um, so if that's what they're seeking that would be improper at this time due to lack of due process and their required notice.

And last thing on Pozner. You know, in the response that I filed, which again, Your Honor, there was no gamesmanship involved, they're very simple responses, but I can understand, you know, the opinion there and I'm not really going to --

THE COURT: Well, I mean, you knew I wanted to read everything in advance. I wouldn't ask you to deliver it in paper if I wasn't going to look at it before the hearing.

MR. REEVES: And I can understand that, Your Honor, and that's why -- and that's -- and I can understand that, Your Honor.

And as far as the motion for default sanctions is concerned, this is really a continuation of his December 2019 filing of it, which defendants had already responded to, I simply filed a response to their supplemental briefing. So there's already a response on file. All of those responses are in Box. But I just summed up the default judgment for you.

With Pozner, this is the first time we're here from -- on any sort of motion to compel, motion

for sanctions. I've already told -- in the motion I've already said that I recognize they weren't responded to. I place no blame or responsibility on anyone but myself for that.

As far as the deadlines, I in no way would ever imply that Mr. Bankston would be responsible for keeping track of my deadlines. I took these cases on, I understand that. I'm responsible for that. And I want the court to understand very clearly that that's not the argument I'm making. I'm not making an argument beyond, I'm preparing these responses, I asked the court for 14 days in my response before the court determines whether or not sanctions are warranted.

I do not -- we do not oppose the motion to compel itself. But what I have asked is the two weeks to be able to get him these full and complete answers. Because there are numerous interrogatories -- it's more the interrogatories. I've already produced documents in the Pozner case, and I've also told counsel that the defendants have stipulated that discovery in other matters and prior production is discovery for this matter, too. So he has all that discovery, too.

So, you know, but as far as the requests are concerned, it's more the interrogatories that require me to gather a decent amount of information that I am

actively working on.

But that's really where I stand on all these motions, Your Honor, and I'm happy to answer any questions that you have.

THE COURT: All right. Mr. Bankston, did you want to respond?

MR. BANKSTON: All right. Yes, Your Honor, I want a brief rebuttal on that.

THE COURT: All right.

MR. BANKSTON: I'll just go down each of them.

First of all, with the idea that a default was not requested in any of the motions but one, these motions are all brought under 215 and default is always one of the available options for the court when it's faced with a 215 sanction.

They say that the discovery wasn't merits-based and that it doesn't address the underlying merits. There's nothing really special about TCPA discovery except that what happens is the discovery stay just vanishes and then the plaintiff can have discovery on anything that's to the motion. The motion is to require clear and convincing evidence of every element of plaintiff's claims and defendant's defenses. So the discovery literally addresses everything in the

case on liability, it just doesn't go to damages. Right?

So, the idea -- you can look at some of these other default cases in the past and it's things like not appearing for deposition is a big one that does it, and it's not the entire case has been -- every bit of discovery has been compromised, but often it's these very discreet parts. But the court says that's so egregious and it's such a thumb in the nose at the court's face that we default.

Here every -- everything is spoiled by this. There's nothing it doesn't touch in terms of liability.

They said that they produced 6,000 pages and that Mr. Reeves is going through 75,000 pages more to produce. It was my understanding that, when he said he was going through the 75,000 pages, that was the 75,000 pages already produced in this case. But apparently now Mr. Reeves is saying that there is 75,000 pages of documents he is still reviewing, which is astonishing to me.

Also, when Mr. Reeves produced those 6,000 pages to me a couple of days ago, he wrote to me and said, here is your 6,000 pages, we trust this is going to be sufficient to solve all of your issues of discovery. That was no indication that there was this

massive trove of information that was still coming. It was, that's it, that will solve it, here is our eleventh-hour fig leaf over our completely naked contempt. Now they say there's more.

He tells me the rogs, the interrogatories, are not simple, that they're really hard to answer. So, okay, he couldn't answer them in 30 days maybe. You know, in normal cases he could probably get an extension on that. But then he couldn't answer them in three and a half months? They're that complicated? They're not that complicated.

He then talks a bit about Mr. Jones's broadcast there and that that million dollar bounty was not about us, was not about plaintiff's counsel and that actually he was talking about somebody else and then he just happened to be later in the same clip accusing Mr. Mattei and the plaintiff's counsel of being the ones who did all this.

The Connecticut Supreme Court has already rejected all of this and said no, obviously Mr. Jones was threatening a million dollar bounty on the lives of plaintiff's counsel, he has unreasonably caused danger to these proceedings and encouraged people not participate. The idea that right now we're going to be trying to defend what Mr. Jones did in that video is

absurd to me, but those sanctions have already been affirmed by a high court.

Mr. Reeves also says that he doesn't know of any missed depositions, he only seems to know that there was some corporate representative depositions that are effectively nonappearances. But Mr. Reeves, even after my presentation, does not seem to understand that in August 31st, 2018, exactly three years ago today, the court issued a discovery order in Heslin that has never been responded to in any way, shape or form.

There's never been any responses to the written discovery, and there was supposed to be a deposition of Alex Jones, of Free Speech Systems, of InfoWars, LLC, and of Owen Shroyer. That's why I brought up Mr. Shroyer's arrest, because I'm not sure I'll ever depose him. Mr. Reeves currently does not know those depositions hasn't happened or that discovery hasn't been answered to on a discovery order which he has prior -- that client has prior been held in contempt of court. And that again is baffling to me.

He briefly addresses Mr. Pattis and the deposition about the Hillary Clinton thing, where he was writing a motion about Hillary Clinton and was

disclosing client's information. Mr. Pattis was sitting inside the deposition when that happened. His co-counsel was taking the deposition and he wrote up a motion, typed it on up and sent it off to the court and publically filed it. And that could very well happen again in this case.

He then goes onto the contempt motions. And the first again he says that the interrogatories are hard to answer. But on the contempt motions they haven't even tried to supplement discovery. And from his perspective he didn't think he would have the need to, is what he was telling us. He thought that that was just about the request for production and the 6,000 documents would be enough. But apparently now they're talking about going and answering those interrogatories, and I don't know that that's ever going to happen.

He does offer you a solution to this contempt motion. His solution is more delay. Is that now, after all of the delay in the trial court before, all of the frivolous appeals for which they were sanctioned for, and after now just throwing away the entire summer doing nothing, Mr. Reeves' solution is, let's just push all the dates back and give me more time to keep doing this. That is not a solution to this case; that

definitely prejudices us.

His other argument is that it's unclear whether there are civil or criminal contempt being sought in this motion. But the motion is captioned motion for contempt under Rule 215 of the Texas civil rules. Their motion recounts that well, that we're going under Civil Rule 215. We're not seeking criminal sanctions.

With Pozner his only real response there is that there was no gamesmanship. And I, you know what, I think I would probably agree with that because I think, in order to play a game, you actually have to care enough to play. And there was no -- it was a complete conscious disregard. If you consciously disregard to this extent you're not playing games, you're just not -- not respecting this court's authority is what's happening.

He says that this is the first time, the Pozner was the first time they've ever gotten any kind of trouble on Pozner. But the thing is is that you see all of these sanction cases talking about you can default a party in the first instance if that instance is coming off of a long pattern of years of discovery abuse and repeated thumbs in the noses of the court. You have to understand that that's perfectly consistent

with everything else they've done in front of this court.

His solution on this one is that he wants 14 days. Just give me 14 more days to answer this discovery. Again, that's not an acceptable solution.

He actually says he does not oppose the motion to compel; in other words, it should be granted. And if that's the case, then Rule 215 is nondiscretionary. You have to grant fees if that's the case.

THE COURT: I have to do what?

MR. BANKSTON: You have to grant fees if that's the case. Attorneys fees will have to be granted if that is what their position is.

And of course, Your Honor, that's true of every motion. Each one of those motions, being meritorious, has an entitlement to attorneys fees with it.

I hadn't wanted to put more paper in front of you, because I knew you were going to have a lot to review. And I honestly anticipated you have a lot to review from them. So I wanted to let you decide to rule first before I gave you any evidence on that. I can do it however you want, I can give you testimony now or I can give you an affidavit and send it directly

to the court, however you want to deal with the attorneys fees issues.

THE COURT: I'm fine with an affidavit, unless Mr. Reeves is going to want to, you know, cross your testimony, which he can't -- it's hard to do to an affidavit.

MR. BANKSTON: Right.

MR. REEVES: Your Honor, I'm happy to deal with the attorneys fees on written submission to you. If I have any issues with what Mr. Bankston submits, I will point those out in writing. I do not need -- we don't need to do that right now, in my opinion.

THE COURT: All right. Then I'll include it in any orders where it is relevant. But just so it's clear and on the record now, your response will be due seven days after Mr. Bankston files his affidavit on attorneys fees or motion or any other filing on attorneys fees.

MR. REEVES: Okay.

MR. BANKSTON: And, Your Honor, there was one other note that I had made, just my last point I wanted to make to you on rebuttal is -- I had to flip a page. And this is just from again your orders and everything to understand this. Mr. Reeves just represented to you that they told us, they informed us a couple of days

ago, that discovery for prior matters is now discovery for all matters. Right.

And what the court needs to be aware of is there is a prior agreement between counsel in this case. There's a prior agreement that says, if any of the documents produced in the Lewis matter you contend are responsive to any request in the other cases, like if there's response to the request in Heslin, then you don't have to produce those documents again, so long as they are identified by their corresponding Bates numbers in the responses. And in here we don't have responses. So none of that works.

So the idea that some Lewis production would be somehow partially compliant with any of the other cases or help any of the other cases, that's in violation of the parties's agreement. So again another small point on that.

But with that, that's all the arguments we have today and we ask you to grant the motions.

THE COURT: All right. Thank you. Um.

MR. REEVES: Your Honor, if I may really fast. If that's okay. I'm sorry, I don't mean to interrupt you.

THE COURT: Well, if what you're going to say is what you meant was they didn't notice a deposition

and that's why it didn't happen --

MR. REEVES: No.

THE COURT: What are you going to say?

MR. REEVES: No, Your Honor, it's on the --

THE COURT: Then Mr. Bankston is going to talk again.

MR. REEVES: Sure.

It's just on the idea that, you know, again he's asked for default across the board and, you know, again that's not relief he requested. And most definitely in these two contempt motions he asked for finding of contempt. And so I would just -- I would again point out that that would be far beyond what he's requested here within his motion. I realize that he said they're under Rule 15, but he specifically requested a contempt finding under Rule 15. 215.

THE COURT: 215, right?

MR. REEVES: 215, yes, Your Honor.

THE COURT: All right.

MR. REEVES: That's it, Your Honor.

THE COURT: Mr. Bankston?

MR. BANKSTON: I don't need to respond, I think you know what you can do under 215.

THE COURT: Okay. All right, I'm going to take it under advisement.

I know the other case is still under advisement but honestly I kind of wanted to wait until we were all together again before I issued orders in that case or on the motion for pro hac vice, which is not looking good, by the way. So that's part of why I've been waiting. And I'll get this to you pretty quickly. As quickly as I can.

MR. REEVES: Your Honor, just one brief point. On the pro hac vice that you mentioned, again I do want to mention to you that Mr. Randazza is involved in this Virginia case where, ever since he's been involved, this discovery has gone fantastically there, it's been dealt with accordingly, it's been dealt with in an orderly fashion. You know, Mr. Bankston has previously told me that he thinks that my client has tons of lawyers working for him in this case --

THE COURT: Well, he's allowed to, that's fine. But the question is does that attorney get to appear in this courtroom. And that's a separate question. He can work on anything somebody properly hires him to work on behind the scenes. That's different.

Somebody wants to take a chance bringing a lawyer in who is not licensed in this state to give advice on what to do in this litigation, they have the

right to do that. What they don't have the right to do is have him appear and represent him in court. I get to decide whether he does that or not.

MR. REEVES: And yes, I understand that, Your Honor.

THE COURT: Okay.

MR. BANKSTON: Your Honor, I have one question about that. Mr. Randazza likes to email me and do stuff on this case. I don't feel like I have any duty to have to deal with him. I don't know if it's fine with you for me not to want to deal with Mr. Randazza but to deal with Mr. Reeves instead.

THE COURT: Well, um, Mr. Reeves, as he told us today, is lead counsel for these cases, is the only counsel of record filed with the court that I'm aware of.

Right, Mr. Reeves?

MR. REEVES: That's correct, Your Honor.

THE COURT: So, I guess Mr. Randazza could email, similarly to how an associate of Mr. Reeves could email, and be speaking for Mr. Reeves if Mr. Reeves allows him to do that. I would suggest that that information be written down.

MR. REEVES: And, Your Honor, as far as I know, there's been no direct communication between

Mr. Randazza and Mr. Bankston without me involved. It's more the issue of I have included Mr. Randazza on emails as a cc and he has responded sometimes. But it's not like a -- it's not like just Mr. Bankston is dealing with Mr. Randazza.

I'm involved because this is, like I said, I'm lead counsel, I take that very seriously in these cases, especially given their history. I'm, you know, I take it very seriously, what's going on here and what I'm dealing with. And so -- and I want the court to understand that and be aware of that.

But, you know, that's what Mr. Bankston is referring to is that Mr. Randazza has been included on emails, has responded to some of them, but it's not solely Mr. Randazza doing things without me knowing or being involved in these matters.

THE COURT: So you're telling me that Mr. Randazza is speaking for you in these communications.

MR. REEVES: The only communications that he has spoken for me about was dealing with sanctions that the court of appeals had rendered on a prior appeal, where they determined the appeal was frivolous that hadn't been paid that we were working out details of how to pay that. That's really it. But everything

else --

THE COURT: Your --

MR. REEVES: I'm not trying to capitulate.

THE COURT: Your response reminds me of a depo transcript I listened to earlier.

MR. REEVES: I'm sorry. I'm trying to answer the question.

THE COURT: So the question, the question was what you're telling the court is that when Mr. Randazza sends an email it's on your behalf and he is speaking for you. Is that right?

MR. REEVES: If he -- if it involves these Texas cases I will say yes, Your Honor.

THE COURT: Okay. Does that help, Mr. Bankston?

MR. BANKSTON: Sure. That will help for now.

THE COURT: All right.

MR. BANKSTON: The other -- one other thing I wanted to bring up, Your Honor, I don't know if this sounds like a good idea to you, obviously these cases require more judicial babysitting than maybe other cases have required in the past.

THE COURT: I'm definitely learning that.

MR. BANKSTON: Yeah.

So, in Lafferty they have come up with a

system of where they're actually having monthly status conferences to just make sure everything is working. I don't know if you want to preschedule our next meeting together or how you may want to do that. I certainly know I would be willing to do something like that.

THE COURT: I mean, it's probably not a bad idea.

MR. BANKSTON: And, you know, there may be cases where you say, hey, do we need to have a status conference this month and both parties say no, everything is swimming smoothly, we don't need to, or whatever. But something I just thought I would throw it out there.

THE COURT: I think I mentioned at the conclusion of the Fontaine hearing that I had some second thoughts about our trial schedule. Um. Mostly I think just for the toll it would take on this court to hear those cases in such rapid succession, assuming that after the first one or two the rest don't settle. Um. Which I would love to sit here and say, looking at it rationally, this is what I think will happen; I just don't know how helpful that kind of examination of what should happen will be in this case, given the personalities and the subject matter and the emotions involved.

So, I don't think I can -- I'm not comfortable setting a schedule for this court that assumes what happens in the first case will affect what happens in the remaining cases. Does that make sense?

MR. BANKSTON: It does.

THE COURT: Okay. So, it is my plan to take another look at those schedules and make some changes. I think I mentioned already one of them was like a backup setting, and we are not going to trial that week. So I haven't issued an order but I've let you guys know that one is not -- there's not going to be a trial that backup setting week.

MR. BANKSTON: One thing I should probably let you know, if you're going to be thinking about trial settings and that sort of thing, is our decision on how to go forward on those cases is obviously going to be heavily affected by the outcome of this motion.

THE COURT: I would assume.

MR. BANKSTON: And so what I would say to that is, just to give the court a heads's up, this is what we would be intending to do, I'm giving the defendant's counsel a head's up, too, that if the disparate liability issues are sort of taken out of the case, like through a default, and there isn't the possibility of jury confusion over the liability

issue --

THE COURT: You're going to seek to consolidate?

MR. BANKSTON: All of them for damages. It's the only thing that makes since under that situation, because then you don't have the jury confusion of those ideas. And then you're only looking at one trial.

So I think to make some of these decisions it's going to have to know what happens in this motion first.

THE COURT: Yeah, okay. Thank you. Okay.

Well, I think that's it. I'm going to take it under advisement. I've got your suggestion, Mr. Bankston, I'll let you guys know, Mr. Reeves and Mr. Bankston, I'll let the two of you know if I'm going to set this for some kind of regular schedule. At a minimum we will have another schedule to discuss the schedules. So.

MR. REEVES: And, Your Honor, just a quick, the backup setting you're talking about, do you know if it's the April 25th setting that you're referencing?

THE COURT: I don't know. When you look at the list it clearly says backup for another case.

MR. REEVES: There's two on the same case. There is Pozner and Lewis are set on the same date.

And that's kind of what I figured, I just wanted to make sure I have the correct understanding.

THE COURT: I wouldn't worry about it too much in general because we're going to address those again. And I also know there are a number of, I think, anyway, that there are several other motions pending that were not set for today, so we're going to have to have another hearing, anyway, on those, right?

So when we ended Fontaine with a possible agreement on confidential records, I don't think I've seen that agreement. Don't talk about it because he's not here, I don't want to make that mistake again. But we had also discussed wanting a similar agreement or order in these cases. So, I haven't seen that in any version, so I expect that's coming.

MR. BANKSTON: Actually I'm glad you brought that up because we probably need to set a hearing for that, Your Honor.

THE COURT: Right, that's what I'm saying.

MR. BANKSTON: Yeah, because I'm going to be getting records soon, I would assume. And yeah, we were able to reach agreement on the other case, but here --

THE COURT: Do I have a copy of it? I don't think I have a copy.

MR. BANKSTON: Yeah, that's been filed. Again I'm not going to go into that.

THE COURT: But remember, Mr. Bankston, when you file something I don't get it.

MR. BANKSTON: Right, it actually wasn't us that filed it. I had assumed that he provided it to you. I guess he hasn't.

THE COURT: He should know even better than you that I don't get it, because he works in Travis County.

MR. REEVES: You're talking about in the Fontaine matter, Your Honor. That's not -- that hasn't happened in this case.

THE COURT: I understand.

MR. REEVES: Okay. Just making sure.

MR. BANKSTON: In this case Mr. Reeves opposes a protocol for in-camera review, says he wants to subpoena the records himself, not have *in camera* review.

THE COURT: Okay. You can set that for hearing but you're going to lose that one because these are sensitive records and I don't -- we're not doing that.

MR. REEVES: Okay, and I appreciate that. And what I will do with that, I'll retrace and I'll

talk to Mr. Bankston about it. It more had been honestly, Your Honor, the idea that plaintiff was going to be the gatekeeper of what was going to be submitted *in camera*.

THE COURT: Right, so that -- he's not the gatekeeper of what's submitted, he's the gatekeeper of what is not submitted *in camera*. And that's standard. We do this all the time for medical and mental health records in every kind of injury case you can think of.

So the plaintiff gets the records, goes through them, says, you can have these, if you want these we're going to ask the judge to look at them first. That's super standard.

MR. REEVES: Sure.

THE COURT: If you oppose that, that's not going to go well. You're going to have a very hard, uphill road convincing me that there's some reason what works in every other case I get won't work in this one.

MR. REEVES: And I understand that, Your Honor. And I want you to know I in no way -- I have no desire to waste the court's time with things like that, especially given now what you've said here. I've used that process many times, I represent -- I mean I have personal injury clients and things. I understand the process. It was just the way that Mr. Bankston and I

discussed it it was -- to me did not comport with that process.

But again I will, especially given what you said, I'll revisit it with Mr. Bankston. I'm sure we can come to an agreement so the court doesn't have to waste their time dealing with that. I have no desire to have the court deal with things that we, as the parties, should be able to figure out.

THE COURT: Great. So when you reach that agreement and you execute it, send me a copy. Don't just file with the clerk.

MR. REEVES: Yes, Your Honor.

THE COURT: Okay. Thank you.

That's going to conclude the hearing, everyone is excused, and I will get with you as soon as possible. Thanks.

MR. REEVES: Thank you, Your Honor.

Have a good afternoon.

(End of proceedings.)

REPORTER'S CERTIFICATE

THE STATE OF TEXAS)

COUNTY OF TRAVIS)

I, Alicia DuBois, Official Court Reporter in and for the 459th District Court of Travis County, State of Texas, do hereby certify that the above and foregoing contains a true and correct transcription of all portions of evidence and other proceedings requested in writing by counsel for the parties to be included in this volume of the Reporter's Record, in the above-styled and numbered cause, all of which occurred in open court or in chambers and were reported by me.

I further certify that this Reporter's Record of the Proceedings truly and correctly reflects the exhibits, if any, offered in evidence by the respective parties.

WITNESS MY OFFICIAL HAND this, the 1st day of October, 2021.

/s/ Alicia DuBois
Alicia DuBois, CSR
Texas CSR 5332
Exp. Date: 1/31/22
Official Court Reporter
459th District Court
Travis County, Texas
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CAUSE NO. D-1-GN-18-001835

NEIL HESLIN,	§	IN THE DISTRICT COURT OF
	§	
Plaintiff,	§	
	§	
	§	
v.	§	TRAVIS COUNTY, TEXAS
	§	
	§	
ALEX E. JONES, INFOWARS, LLC, FREE SPEECH SYSTEMS, LLC; AND OWEN SHROYER	§	
	§	
	§	
	§	
Defendants,	§	459th JUDICIAL DISTRICT

[PROPOSED] ORDER ON DEFENDANT, OWEN SHROYER'S, MOTION FOR RECONSIDERATION OF COURT'S RULING OF DEFAULT JUDGMENT ON PLAINTIFF'S SECOND MOTION FOR CONTEMPT UNDER RULE 215

On this day, came to be heard Defendant, Owen Shroyer's, Motion for Reconsideration of the Court's Order Granting a Liability Default Judgment on Plaintiff's Second Motion for Contempt Under Rule 215. The Court, having considered the Motion, Plaintiff's response thereto, along with the arguments of counsel, finds that Defendant's Motion should be GRANTED, and upon further consideration, Plaintiff's request for default judgment as to Defendant, Owen Shroyer, is hereby DENIED. It is therefore ORDERED that Plaintiff's Second Motion for Contempt Under Rule 215 is hereby DENIED in all respects except to the extent monetary sanctions were previously awarded to Plaintiff based on said motion.

SIGNED ON THIS THE _____ DAY OF _____, 2022.

_____

HONORABLE JUDGE MAYA GUERRA GAMBLE

APPROVED AS TO FORM
AND ENTRY REQUESTED:

REEVES LAW, PLLC

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Name	BarNumber	Email	TimestampSubmitted	Status
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CAUSE NO. D-1-GN-18-001835

NEIL HESLIN,	§	IN THE DISTRICT COURT OF
	§	
Plaintiff,	§	
	§	
	§	
v.	§	TRAVIS COUNTY, TEXAS
	§	
	§	
ALEX E. JONES, INFOWARS, LLC, FREE SPEECH SYSTEMS, LLC; AND OWEN SHROYER	§	
	§	
	§	
	§	
Defendants,	§	459th JUDICIAL DISTRICT

DEFENDANT, ALEX JONES'S, MOTION FOR RECONSIDERATION OF THE COURT'S ORDER GRANTING A LIABILITY DEFAULT JUDGMENT ON PLAINTIFF'S SECOND MOTION FOR CONTEMPT UNDER RULE 215 AND MOTION FOR DEFAULT JUDGMENT

Defendant, Alex Jones, moves the Court to reconsider the Court's October 26, 2021 order granting Plaintiff's motion for default judgment and second motion for contempt, and would show unto the Court as follows:

I. BACKGROUND

Alex Jones (hereinafter "Mr. Jones") is a defendant in each of the three (3) cases filed by the plaintiffs against co-Defendants, Free Speech Systems, LLC ("Free Speech Systems"); and Infowars, LLC ("Infowars") in the *Lewis* and *Pozner* cases, in addition to co-Defendant, Owen Shroyer, in the *Heslin* matter's defamation claim. In this now-consolidated matter, Plaintiff, Neil Heslin, has asserted claims against Mr. Jones for defamation and intentional infliction of emotional distress, with these claims arising out of alleged defamatory comments pertaining to the Sandy Hook tragedy.

In his live pleadings for each of these claims, Plaintiff goes through a litany of alleged videos, articles, and interviews involving Free Speech Systems and/or Mr. Jones or Mr. Shroyer all the way back to 2013. Yet, upon review of Plaintiff's causes of action, the Court will find:

(i) Plaintiff's defamation claim involves only two (2) broadcasts from June 26, 2017 (the broadcast involving Mr. Shroyer) and July 20, 2017 (alleged rebroadcasting of Mr. Shroyer's June 26, 2017 broadcast);[1] and

(ii) Plaintiff's IIED claim encompasses only nine (9) videos, two (2) of which are the same videos upon which Mr. Heslin has based his defamation claim. The earliest video referenced in Mr. Heslin's IIED cause of action is from November 18, 2016.[2]

Plaintiff initially filed suit on April 16, 2018 against Mr. Jones and the other Defendants asserting claims for defamation. Shortly after the lawsuit was filed, Defendants filed a TCPA motion to dismiss. In response, Plaintiff moved for limited discovery under the TCPA, which was granted by the then-presiding judge, Judge Jenkins, in an order dated August 31, 2018. Defendants resisted this discovery, resulting in Plaintiff filing a motion for contempt seeking sanctions under Rule 215 of the Texas Rules of Civil Procedure. *See Jones v. Heslin,* No. 03-19-00811-CV, 2020 Tex. App. LEXIS 2441, at *3 (Tex. App.—Austin March 25, 2020, pet. denied) (mem. op.). After Plaintiff filed his motion for contempt, Defendants initiated an appeal on the basis that the district court had not timely ruled on their TCPA motion to dismiss and thus it had been denied as a matter of law. The Third Court of Appeals determined the appeal was premature and dismissed it for lack of jurisdiction.

[1] *See* Plaintiff's Third Am. Pet. at ¶55.

[2] *See* Plaintiff's Orig. Pet. at ¶71.

Plaintiff then filed his First Amended Petition in his defamation lawsuit on June 26, 2019, adding claims for intentional infliction of emotional distress. However, Plaintiff then further amended his petition, ultimately filing his Third Amended Petition—his live pleading—on August 8, 2019, wherein Plaintiff removed the IIED claim entirely. That same day, Plaintiff filed a second lawsuit against Defendants, Mr. Jones, Infowars, and Free Speech Systems, re-asserting his cause of action for intentional infliction of emotional distress. In that claim, Plaintiff asserts that videos from: (i) November 28, 2016; (ii) March 8, 2017; (iii) April 22, 2017; (iv) June 13, 2017; (v) June 19, 2017; (vi) June 26, 2017; (vii) July 20, 2017; (viii) October 26, 2017; and (ix) April 20, 2018.

After the defamation case was remanded back to the district court following the first attempted appeal, a hearing on Defendants' TCPA motion and Plaintiff's motion for contempt occurred on October 17, 2019. That same hearing also addressed Plaintiff's motion for expedited discovery in the IIED case. At this hearing, Defendants offered to stipulate to or concede facts pleaded by Plaintiff to obviate the need to respond to the TCPA discovery requests in the defamation case. Judge Jenkins subsequently signed orders on October 18, 2019 which: (i) granted Plaintiff's motion for contempt in the defamation case; (ii) denied Defendants' TCPA motion to dismiss in the defamation case; and (iii) granted Plaintiff's motion for expedited discovery in the IIED case. In the order granting Plaintiff's motion for contempt in the defamation case, the Court ordered that "pursuant to Rule 215.2(b)(3), the matters regarding which the August 31, 2018 order was made (Plaintiff's burden in responding to Defendants' TCPA Motion) shall be taken to be established in favor of Plaintiff for the purposes of the TCPA Motion." *Id.*

At the same time, the district court denied Defendants' TCPA motion to dismiss in Plaintiff's defamation case. *Id.* Another hearing in the IIED case occurred on December 18, 2019 regarding Defendants' TCPA motion to dismiss in the IIED case and a motion for sanctions filed

by Plaintiff regarding alleged discovery deficiencies in the IIED case. On December 20, 2019, the trial court denied Defendants' TCPA motion to dismiss and granted Plaintiff's motion and awarded $100,000.00 in sanctions and took Plaintiff's request for a default judgment in the IIED case under advisement.

In November 2019, Defendants again filed an appeal of the trial court's denial of their TCPA motion to dismiss in the defamation case, and subsequently appealed the denial of the TCPA motion in the IIED claim. Defendants' appeals were ultimately denied both by the Third Court of Appeals and the Texas Supreme Court, and the cases were remanded back to the trial court on June 4, 2021. Plaintiff then filed a Second Motion for Contempt Under Rule 215 on July 6, 2021, contending that Defendants had failed to comply with the August 31, 2018 discovery order entered by Judge Jenkins and seeking sanctions, including a default judgment being entered against Defendants. Plaintiff also filed a supplemental brief in support of his motion for default judgment in the IIED case, contending Mr. Jones, Infowars, and Free Speech Systems had not complied with the district court's December 2019 discovery order in Plaintiff's IIED case.

In each of Plaintiff's motions and supplemental brief in support at issue here, Plaintiff largely focused on rehashing the past TCPA discovery issues in the case, all of which had already been addressed by Judge Jenkins. However, Plaintiff contended that the December 20, 2019 order in the IIED case warranted the granting of a default judgment against all Defendants. Plaintiff's initial briefing barely mentions Mr. Jones, except to criticize him for not being able to remember former employees or know who did exactly what on a day-to-day basis. Yet in Plaintiff's supplemental briefing, Plaintiff focused on situations far outside the confines of the alleged discovery issues at hand. Instead, Plaintiff dedicates a significant portion of his briefing discussing post-lawsuit statements made by Mr. Jones involving the *Lafferty* matter in Connecticut. It also

briefly mentions a comment by Mr. Jones making a slight at Plaintiff's counsel. Yet, despite the situation involving statements made about Plaintiffs' counsel in Connecticut, Mr. Jones has made no statements of violence of any sort about any of the parties or the Court. It is true Mr. Jones has at times exercised his First Amendment right to criticize what is going on in these cases from a rulings-standpoint, but that has nothing to do with whether or not Mr. Jones has fulfilled his discovery obligations in these cases.

On August 31, 2021, the Court held a hearing on Plaintiff's second motion for contempt and continuation of Plaintiff's request for a default judgment in the IIED case, along with other sanctions motions filed by the remaining Plaintiffs in the other cases. At this hearing, Plaintiff's counsel again focused on these post-lawsuit comments by Mr. Jones about the Plaintiffs' counsel in Connecticut and other critical comments Mr. Jones has made about the cases. Yet, Plaintiff did *not* actually describe any discovery deficiencies or abuses by Mr. Jones, the individual, except for a claim that they had a copy of a single text with a reporter which Mr. Jones had not produced because he no longer had the phone with that message. Everything else involving Mr. Jones the individual defendant focused on these incendiary post-lawsuit comments that had nothing to do with the actual claims that Mr. Jones had committed discovery abuses so severe that a default judgment was warranted.

Indeed, in the motions themselves, Plaintiff's arguments about alleged discovery abuses deal solely with Free Speech Systems and the alleged failure to preserve relevant evidence. There is no claim that Mr. Jones has not met his discovery obligations other than claims that he provided "evasive" answers in written discovery and that he had some duty to provide information at deposition that he either did not know or did not remember. Rather, Plaintiff's motions only make

generalized allegations that "Defendants have not taken any actions in this Court since remand or responded to their discovery obligations." *See, e.g.,* Plaintiff's Second Mtn. for Contempt at 20.

Notwithstanding that Plaintiff did not specify any serious or obstructive discovery conduct by Mr. Jones beyond being critical of the answers which had been provided, the Court subsequently granted Plaintiff's motion for contempt and motion for default judgment, ultimately signing an amended order on October 26, 2021 wherein the Court entered a default judgment as to liability against all Defendants, including Mr. Jones. In the Court's order, there is no delineation between the individual Defendants. To the contrary, the order discusses: (i) how "Defendants" violated other discovery orders in the other Sandy Hook cases before this Court; (ii) that "Defendants" have engaged in pervasive and persistent obstruction of the discovery process in general; (iii) that "Defendants" refused to produce critical evidence; (iv) that "Defendants" have shown a "deliberate, contumacious, and unwarranted disregard for this Court's authority;" and (v) that the Court found that "Defendants' egregious discovery abuse justifies a presumption that its defenses lack merit." *See* Amended Order dated October 26, 2021 at 3-4. However, the Court did state in its order that part of the Court's consideration for the default sanction included "Mr. Jones' public threats, and Mr. Jones' professed belief that these proceedings are 'show trials.'" *Id.* at 4. However, the Court did not explain how Mr. Jones's "public threats" which had nothing to do with Plaintiff's cases here or how Mr. Jones's criticisms of these lawsuits in general as "show trials" established Mr. Jones had not complied with his individual discovery obligations. The Court likewise granted Plaintiff monetary sanctions for Plaintiff's attorneys' fees in connection with the motion.

Mr. Jones is seeking to have the Court reconsider its ruling on the motion for contempt and deny Plaintiff's motion for default judgment as to Mr. Jones, individually. As stated above, in its

amended order, the Court made no specific findings as to Mr. Jones and any alleged discovery abuses by Mr. Jones, but again it did reference Mr. Jones's alleged "public threats" and "professed belief" that the lawsuits are "show trials." *See* Am. Order at 4. Similar to Mr. Shroyer's situation, the fact of the matter is that Mr. Jones did and has overall complied with his discovery obligations. Even if the Court disagrees, Plaintiff has never actually specified the precise discovery abuses allegedly committed by Mr. Jones, and certainly has not done so to demonstrate that such alleged conduct was so pervasive as to warrant default-judgment sanctions.

Unfortunately, it appears the inflaming videos and dramatic rhetoric in Plaintiff's briefing and oral argument obscured the fact that Plaintiff had little to no complaints about Mr. Jones's discovery responses. Rather, Plaintiff's real focus was on Free Speech Systems and Infowars and claims that those entity-defendants failed to preserve a whole host of relevant evidence. Yet, the Court made no attempt to distinguish between the individual defendants, and instead lumped them together and attributing alleged conduct by the entity-defendants to the individual defendants, including Mr. Jones, granting a default judgment on liability across the board as to all Defendants.

Yet as this case has progressed, it has become readily apparent that Mr. Jones as an individual has not and has not previously done anything that is so exceptional that default-judgment sanctions would be warranted on claims against Mr. Jones, individually. Indeed, Mr. Jones has now been deposed multiple times, including another deposition in December 2021. He has also produced every document in his possession, care, custody, or control that is responsive to Plaintiff's production requests (and did so prior to the August 31, 2021 hearing on these motions). Moreover, while Mr. Jones was subject to prior sanctions for as a co-Defendant in both the defamation and IIED cases, Judge Jenkins's orders in those cases likewise did not delineate between Defendants. And given the nature of Plaintiff's defamation and IIED claims against Mr.

Jones, it is likewise clear that Mr. Jones's defenses to such claims have merit regardless of any alleged discovery issues. In particular, Mr. Jones has a clear defense to the defamation claims involving Mr. Shroyer's alleged defamatory comments in the June 26, 2-17 broadcast, since he was not even there nor made the statements themselves. Moreover, the Court can actually determine as a matter of law that the singular comment by Mr. Jones in a July 20, 2017 re-broadcast of Mr. Shroyer's report is not defamatory as a matter of law (wherein Mr. Jones says, among other things, that regarding the Sandy Hook tragedy, he is "sure it's all real"). *See* Pl.'s Third Am. Pet. at ¶24. At the very least, the Court can see how regardless of the discovery situation, Mr. Jones has a meritorious defense to Plaintiff's defamation claims which he should be entitled to assert to a jury at trial.

Mr. Jones likewise has meritorious defenses to Plaintiff's IIED claims, including, but not limited to: (i) Plaintiff's IIED claims are truly just defamation claims which are time-barred; and (ii) Plaintiff has no evidence Mr. Jones said or did anything with the specific intent to cause emotional distress to Plaintiff. Because Plaintiff has never actually demonstrated discovery conduct by Mr. Jones in this now-consolidated matter has been so out-of-bounds and in such bad faith as to warrant default-judgment sanctions, Mr. Jones requests the Court reconsider its ruling on Plaintiff's Second Motion for Contempt and Motion for Default Judgment and instead deny Plaintiff's motions to allow this case to proceed to trial so that a jury can make determinations on the underlying merits of Plaintiff's claims against Mr. Jones.

II. ARGUMENT AND AUTHORITIES

Mr. Jones understands the Court has the inherent authority under Rule 215 to enter a default judgment as sanctions for alleged discovery abuses; however, Mr. Jones contends that such sanctions are completely unwarranted and are so unjust as to violate Mr. Jones's due process rights

to have the merits of Plaintiff's defamation and IIED claims heard by a jury—to the extent the IIED claims survive summary judgment. While a trial court has the power to issue sanctions, that sanction power is limited in that the court "may not impose a sanction that is more severe than necessary to satisfy its legitimate purpose." *Cire v. Cummings*, 134 S.W.3d 835, 839 (Tex. 2004) (internal citations omitted)).

Sanctions for discovery abuse serve three legitimate purposes: (1) to secure compliance with the discovery rules; (2) to deter other litigants from similar misconduct; and (3) to punish violators. *Chrysler Corp. v. Blackmon*, 841 S.W.2d 844, 849 (Tex. 1992). When a party fails to comply with proper discovery requests or fails to obey an order to provide or permit discovery, the trial court may, after notice and hearing, make such orders in regard to the failure, which includes, among other things, an order striking pleadings, dismissing with or without prejudice the action or proceedings, or rendering a default judgment against the disobedient party. *See* TEX. R. CIV. P. 215.2. Although punishment, deterrence, and securing compliance continue to be valid reasons for imposing sanctions, these considerations alone will not justify "trial by sanctions." *Chrysler Corp.*, 841 S.W.2d at 849; *see also Westfall Family Farms, Inc. v. King Ranch, Inc.*, 852 S.W.2d 587, 591 (Tex. App.—Dallas 1993, writ denied).

Notwithstanding rule 215, discovery abuse sanctions must be "just." *Chrysler Corp.*, 841 S.W.2d at 849; *see also TransAm. Nat. Gas Corp. v. Powell*, 811 S.W.2d 913, 917 (Tex. 1991) (orig. proceeding). Moreover, so-called death penalty sanctions are limited by constitutional due process. *Id.* at 917. Thus, "a death penalty sanction cannot be used to adjudicate the merits of claims or defenses unless the offending party's conduct during discovery justifies a presumption that its claims or defenses lack merit." *Paradigm Oil, Inc. v. Retamco Operating, Inc.*, 372 S.W.3d 177, 184 (Tex. 2012).

There is no doubt that the default judgment entered by this Court against Mr. Jones constitutes a "death penalty" sanction. A death penalty sanction is a severe form of sanction that prevents a party from contesting liability and allows for the determination of liability based on the party's discovery conduct rather than the dispute's merits. *Ring & Ring v. Sharpstown Mall Tex., LLC*, No. 01-16-00341-CV, 2017 WL 3140121, at *18 (Tex. App.—Houston [1st Dist.] July 25, 2017, no pet.) (mem. op.) (citing *TransAmerican*, 811 S.W.2d at 917-18). When a trial court places a defendant in default, the result is that the defaulting defendant admits all pleaded facts establishing liability. *Id.* (citing *Paradigm Oil*, 372 S.W.3d at 186). The imposition of death-penalty sanctions that permit adjudication based on discovery conduct is limited by constitutional due process. *Id.* (citing *TransAmerican*, 811 S.W.2d at 917).

Absent a party's flagrant bad faith or counsel's callous disregard for the responsibilities of discovery under the rules, sanctions that prevent a decision on the merits of a case cannot be justified. *Chrysler Corp.*, 841 S.W.2d at 849; *see also TransAmerican*, 811 S.W.2d at 918. However, even in those cases where death penalty sanctions can be justified, a trial court must first consider less stringent sanctions and if those lesser sanctions would adequately promote compliance, deterrence, and punishment. *Chrysler Corp*, 841 S.W.2d at 849; *see also TransAmerican*, 811 S.W.2d at 917. In all but the most exceptional cases, before the trial court may strike a party's pleadings, the record must show that the trial court considered and tested less stringent sanctions. *Cire*, 134 S.W.3d at 842; *see also GTE Commc'n Sys. Corp. v. Tanner*, 856 S.W.2d 725, 730 (Tex. 1993). Therefore, the record must "contain some explanation of the appropriateness of the sanctions imposed." *Spohn Hosp. v. Mayer*, 104 S.W.3d 878, 883 (Tex. 2003). While case determinative sanctions may be imposed in the first instance, that is only in exceptional cases when they are clearly justified, and it is fully apparent that no lesser sanctions

would promote compliance with the rules. *GTE,* 856 S.W.2d at 729; *see also Spohn Hosp.,* 104 S.W.3d at 883 (requiring that "the record should contain some explanation of the appropriateness of the sanctions imposed.").

As with other discovery sanctions, death penalty sanctions may not be excessive and must bear some relationship to the offensive conduct. *TransAmerican,* 811 S.W.2d at 917. In addition, the imposition of death penalty sanctions is limited by constitutional due process because the striking of a party's pleading and dismissal of its action necessarily results in the adjudication of the party's claims or defenses "without regard to their merits but based upon the parties' conduct of discovery." *Id.* at 918. Therefore, before the trial court may impose death penalty sanctions, the court must determine the offensive conduct "justif[ies] a presumption that the offending party's claims or defenses lack merit." *Id.* In other words, the sanctions must be "just" in the context of the alleged discovery abuse. *Id.*

The imposition of the death-penalty sanction is limited by constitutional due process and therefore, "out to be the exception rather than the rule." *TransAmerican,* 811 S.W.2d at 917, 919. "Discovery sanctions cannot be used to adjudicate the merits of a party's claims or defenses unless a party's hindrance of the discovery process justifies a presumption that its claims or defenses lack merit." *Id.* at 918. And sanctions which are so severe as to preclude presentation of the merits of the case should not be assessed absent a party's flagrant bad faith or counsel's callous disregard for the responsibilities of discovery under the rules." *Id.* Even when a party has demonstrated "flagrant bad faith[,]" "lesser sanctions must first be tested to determine whether they are adequate to secure compliance, deterrence, and punishment of the offender." *Chrysler Corp.,* 841 S.W.2d at 849. The Texas Supreme Court has consistently emphasized the continued validity of the rule

that generally lesser sanctions should be tested first. *Cire,* 134 S.W.3d at 842; *see also Hamill v. Level,* 917 S.W.2d 15, 16 n. 1 (Tex. 1996).

In *TransAmerican Natural Gas Corp. v. Powell,* 811 S.W.2d 913 (Tex. 1991), the Texas Supreme Court established a two-part test for determining whether a sanctions award is "just." First, a direct relationship must exist between the offensive conduct and the sanction imposed, which means that the sanction must be "directed against the abuse and toward remedying the prejudice caused [to] the innocent party." *Cire,* 134 S.W.3d at 839 (quoting *TransAmerican,* 811 S.W.2d at 917). Second, the sanction must not be excessive, meaning that "[t]he punishment should fit the crime," and the courts must consider the availability of less-stringent sanctions and whether the less-stringent sanctions would fully promote compliance." *Id.* (quoting *TransAmerican,* 811 S.W.2d at 917); *see also Taylor v. Taylor,* 254 S.W.3d 527, 533 (Tex. App.—Houston [1st Dist.] 2008, no pet.) ("[A] sanction imposed should be no more severe than necessary to satisfy its legitimate purposes, which include securing compliance with discovery rules, deterring other litigants from similar misconduct, and punishing violators.").

Applying the law to the facts of this case regarding Mr. Jones as an individual Defendant, there is simply nothing in Plaintiff's second motion for contempt or motion for default judgment (and supplemental briefing) nor Plaintiff's counsel's argument at the hearing that shows Mr. Jones committed discovery abuses so outrageous as to demand a default judgment as punishment. And while Mr. Jones and the undersigned are cognizant of the Court's prior comments about the degrees of separation between Mr. Jones and Free Speech Systems and/or Infowars, the fact of the matter is that Plaintiff has not pleaded any claim that would implicate liability of either of the entity-defendants to Mr. Jones, individually. The Court must consider Mr. Jones and the entity-defendants as truly separate and distinct defendants, particularly in such a significant trial-by-

sanctions order like the one at issue in this motion. Yet, the Court's order does not truly explain what conduct by Mr. Jones involving the discovery in each of Plaintiff's cases was abusive and how that warranted further sanctions, particularly when Mr. Jones did not have and could not provide any further document production and he has now been deposed on numerous occasions in these cases. The Court similarly did not explain what specific conduct justified the severe death-penalty sanction, except to reference Mr. Jones's alleged "public threats" or his "show trials" comment. But those comments, even if completely true, have no direct relationship to the discovery issues on which Plaintiff was granted a default judgment by this Court.

Mr. Jones asks that the Court review its decision granting a default judgment as to him as an individual defendant to objectively determine that those post-lawsuit critiques have no relation whatsoever to the discovery in Plaintiff's cases. All signs point to the determination that a default-judgment sanction against Mr. Jones was unwarranted and unjustified. Beyond the sanction not being justified, Plaintiff likewise failed to demonstrate that any alleged discovery abuse(s) by Mr. Jones were so offensive as to justify a presumption that his defenses to such defamation claims lack merit. *TransAmerican*, 811 S.W.2d at 917. And the Court's basis for considering whether lesser remedies would be effective instead of a default judgment—"Mr. Jones' public threats and Mr. Jones' professed belief that these proceedings are 'show trials'"—have no ""direct relationship" to the discovery issued raised by Plaintiff about Mr. Jones, individually (as limited as they may be). *See* Am. Order at 4.

Plaintiff simply did not meet the burdens required by the Texas Supreme Court in *TransAmerican* to be entitled to a default-judgment sanction against Mr. Jones. Plaintiff demonstrated no such conduct at all by Mr. Jones and instead just loudly pointed to post-lawsuit comments by Mr. Jones about other Sandy Hook-related litigation and criticism of the lawsuits in

general with the sole intention of inflaming the Court and distracting the Court from his smokescreen that Mr. Jones has had no sanctionable discovery misconduct that would justify default-judgment sanctions. Yet, as stated above, these post-lawsuit comments bear no direct relationship to any alleged discovery misconduct by Mr. Jones. *TransAmerican,* 811 S.W.2d at 917. Second, a default-judgment sanction against Mr. Jones is extremely excessive and in no way fits whatever alleged "crime" Mr. Jones allegedly committed as it pertains to discovery in Plaintiff's defamation and IIED cases. *Id.* More to the point, while the Court states in its order that it considered lesser sanctions, as Mr. Jones has pointed out in this briefing, none of the justifications for not imposing lesser restrictions specify the alleged misconduct by Mr. Jones have any direct relationship to discovery in this case. Indeed, there is no discussion as to whether Mr. Jones as an individual defendant had even been the subject of prior or lesser sanctions as it relates to discovery issues in this case to justify the default-judgment sanction.

Moreover, the reality is that while Plaintiff has asserted defamation and IIED claims against Mr. Jones, and the discovery Plaintiff has complained about has no relevance to the broadcasts which serve as the basis for Plaintiff's defamation and IIED claims. In fact, Mr. Jones and the other Defendants in this lawsuit contend Plaintiff's IIED claims are just defamation claims improperly perched as IIED claims for Plaintiff to try and gain another year's worth of broadcasts for statute-of-limitations purposes. Regardless of the cause of action, the broadcasts themselves—and questions surrounding Mr. Jones's alleged individual liability for in those-listed broadcasts, which he has been questioned on repeatedly—are the only evidence needed to determine the merits of Plaintiff's defamation and IIED claims, to the extent the IIED claim should survive summary dismissal.

For example, the Texas Supreme Court has consistently held that in the context of defamation claims, a determination of whether a broadcast is defamatory is based on the "broadcast as a whole," the "statements in the broadcast," and the "broadcast's gist." *Neely v. Wilson,* 418 S.W.3d 52, 63-64 (Tex. 2013) (citing *Turner v. KTRK Television, Inc.,* 38 S.W.3d 103, 114-15 (Tex. 2000) ("the meaning of a publication, and thus whether it is false and defamatory, depends on a reasonable person's perception of the entirety of a publication and not merely on individual statements")).

Plaintiffs' pleadings also clearly demonstrate that the IIED claims are dependent upon the allegedly defamatory statements and conduct of Mr. Jones and the entity-defendants as it may pertain to Plaintiff. In other words, the "extreme and outrageous conduct [Mr. Jones is] alleged to have engaged in is making allegedly defamatory statements about Plaintiff[]." *Patel v. Patel,* No. 14-18-00771-CV, 2020 WL 2120313, at *19 (Tex. App.—Houston [14th Dist.] May 5, 2020, no pet.). Because Plaintiff's IIED claims depend on the allegedly defamatory statements of Mr. Jones and other co-Defendants, Plaintiff undoubtedly has (or had) another remedy such that the IIED claims should be dismissed as a matter of law. And even if they are not, Plaintiff's IIED claims as to any video before August 8, 2017 is time-barred as a matter of law (which is seven (7) of the nine (9) videos listed in the IIED claim).[3]

Thus, Plaintiff has the entirety of the "evidence" and discovery he needs to argue the merits of his defamation and IIED claims against Mr. Jones, individually, to a jury. To wit, even if Plaintiff claims he does indeed lack some evidence he claims is relevant to his lawsuit—which only implicates four (4) legally viable and actionable broadcasts that are within the applicable

[3] Plaintiff's second lawsuit for the IIED claim was filed August 8, 2019. IIED claims are subject to two-year statute of limitations. *See* TEX. CIV. PRAC. & REM. CODE § 16.003. Thus, for any videos or broadcasts prior to August 8, 2017, those claims are time barred. Thus, Plaintiff's IIED claims should at most be based upon only the October 26, 2017 and April 20, 2018 broadcasts.

limitations periods—that discovery situation would involve information/documents/videos pertaining to Free Speech Systems and/or Infowars and not any documents or conduct by Mr. Jones as an individual.

In addition, if the Court correctly reconsiders its prior ruling and determines Mr. Jones and his co-Defendant(s) should be allowed to have the full merits of Plaintiff's claims decided by a jury, Plaintiff will truly have suffered no prejudice or otherwise been deterred in his efforts to obtain discovery from Mr. Jones regarding his claims against Mr. Jones, individually.

Because of the foregoing, it is now apparent that the default-judgment sanctions against Mr. Jones were not justified and arguably constitute a violation of Mr. Jones's individual due process rights. Even more importantly, the Court should consider how Plaintiff and his counsel did not raise any specific discovery abuse conduct by Mr. Jones beyond complaining about his "evasive" discovery answers (which the Court previously declined to compel Mr. Jones to respond otherwise) and being critical of Mr. Jones not being able to remember or know everything Plaintiff wanted him to know about broadcasts as far back as 2013.

To reiterate, neither second motion for contempt nor Plaintiff's motion for default judgment or supplemental brief in support specify any alleged discovery abuses or discovery misconduct by Mr. Jones individually which would come remotely close to supporting a default-judgment sanction under Rule 215. Instead, Plaintiff's briefing discusses focuses almost entirely on alleged misconduct or discover deficiencies by the "Infowars" defendants, i.e., Free Speech Systems and Infowars. But Plaintiff's motions—and more importantly the order submitted by Plaintiff and signed by the Court—improperly blur the lines between the individual Defendants and the entity-Defendants and the alleged discovery abuses that have been committed. And Plaintiff essentially distracted the Court away from the lack of any discovery-conduct complaints

about Mr. Jones individually by re-directing and focusing on post-litigation commentary that bore no direct relationship at all to the alleged discovery abuses at issue in Plaintiff's motions. This tactic by Plaintiff unfortunately proved successful and resulted in what Mr. Jones contends is an improper, blanket default-judgment ruling against all Defendants, which obviously includes Mr. Jones's contention that a liability-default on all of Plaintiff's claims against Mr. Jones, individually, was wholly improper and an abuse of discretion.

Yet, Mr. Jones believes that an objective review of the Court's rulings and findings, and the issues previously briefed by Plaintiff, simply do not demonstrate any misconduct by Mr. Jones that justifies imposing default-judgment sanctions. Due process and the underlying facts of this case demand that Plaintiff be required to present the merits of his defamation and IIED claims against Mr. Jones to a jury to decide and that Mr. Jones be allowed to defend against such claims, as opposed to the current trial-by-sanction on liability that has occurred. Even if the Court finds some sort of significant discovery misconduct by Mr. Jones has occurred—which it has not—discovery has nothing to do with the merits of Mr. Jones's defenses to Plaintiff's defamation claims and the merits and legal defenses to Plaintiff's IIED claims (especially the statute-of-limitations defense as to seven (7) of the nine (9) videos referenced in Plaintiff's IIED cause of action). Consequently, Mr. Jones respectfully requests the Court reconsider its prior ruling and withdraw its prior default0judgment sanctions as to Mr. Jones and deny Plaintiff's motion for contempt and motion for default judgment as it pertains to Plaintiff's claims against Mr. Jones, individually.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Defendant, Alex Jones, prays that the Court grant this motion for reconsideration and ultimately deny Plaintiff's motion for contempt and motion for default judgment, withdrawing the default-judgment sanction entered by the Court's

amended order on October 26, 2021, along with such other and further relief to which Defendant, Alex Jones, may be justly entitled.

Dated: December 30, 2021.

Respectfully submitted,

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ATTORNEY FOR DEFENDANTS

CERTIFICATE OF CONFERENCE

The undersigned counsel for Defendants has previously conferred with counsel for Plaintiff regarding this Motion, and counsel for Plaintiff has indicated Plaintiff is **opposed** to this Motion.

/s/ Bradley J. Reeves
Bradley J. Reeves

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by the method indicated below upon all counsel of record and interested parties in accordance with the Texas Rules of Civil Procedure on December 30, 2021.

Mark Bankston
William Ogden
FARRAR & BALL, LLP
1117 Herkimer Street
Houston, TX 77008

via electronic service

/s/ Bradley J. Reeves
Bradley J. Reeves

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CAUSE NO. D-1-GN-18-001835

NEIL HESLIN,	§	IN THE DISTRICT COURT OF
	§	
Plaintiff,	§	
	§	
	§	
v.	§	TRAVIS COUNTY, TEXAS
	§	
	§	
ALEX E. JONES, INFOWARS, LLC, FREE SPEECH SYSTEMS, LLC; AND OWEN SHROYER	§	
	§	
	§	
	§	
Defendants,	§	459th JUDICIAL DISTRICT

[PROPOSED] ORDER ON DEFENDANT, ALEX JONES'S, MOTION FOR RECONSIDERATION OF COURT'S RULING OF DEFAULT JUDGMENT ON PLAINTIFF'S SECOND MOTION FOR CONTEMPT UNDER RULE 215 AND MOTION FOR DEFAULT JUDGMENT

On this day, came to be heard Defendant, Ales Jones's, Motion for Reconsideration of the Court's Order Granting a Liability-Default Judgment on Plaintiff's Second Motion for Contempt Under Rule 215 and Motion for Default Judgment. The Court, having considered the Motion, Plaintiff's response thereto, along with the arguments of counsel, finds that Defendant's Motion should be GRANTED, and upon further consideration, Plaintiff's request for default judgment as to Defendant, Alex Jones, is hereby DENIED. It is therefore ORDERED that Plaintiff's Second Motion for Contempt Under Rule 215 and Motion for Default Judgment are hereby DENIED in all respects except to the extent monetary sanctions were previously awarded to Plaintiff based on said motions.

SIGNED ON THIS THE _____ DAY OF _____, 2022.

_____

HONORABLE JUDGE MAYA GUERRA GAMBLE

APPROVED AS TO FORM
AND ENTRY REQUESTED:

REEVES LAW, PLLC

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CAUSE NO. D-1-GN-18-001835

NEIL HESLIN, *Plaintiff,* v. ALEX E. JONES, INFOWARS, LLC, FREE SPEECH SYSTEMS, LLC; AND OWEN SHROYER *Defendants,*	§ § § § § § § § § § §	IN THE DISTRICT COURT OF TRAVIS COUNTY, TEXAS 459th JUDICIAL DISTRICT

DEFENDANTS, FREE SPEECH SYSTEMS, LLC'S AND INFOWARS, LLC'S, MOTION FOR RECONSIDERATION OF THE COURT'S ORDER GRANTING A LIABILITY DEFAULT JUDGMENT ON PLAINTIFF'S SECOND MOTION FOR CONTEMPT UNDER RULE 215 AND MOTION FOR DEFAULT JUDGMENT

Defendants, Free Speech Systems, LLC ("Free Speech Systems") and Infowars, LLC ("Infowars"), move the Court to reconsider the Court's October 26, 2021 order granting Plaintiff's motion for default judgment and second motion for contempt, and would show unto the Court as follows:

I. BACKGROUND

Free Speech Systems and Infowars are defendants in each of the three (3) cases filed by the plaintiffs against co-Defendants, Alex Jones ("Mr. Jones") in the *Lewis* and *Pozner* cases, along with another co-Defendant, Owen Shroyer ("Mr. Shroyer"), in the *Heslin* matter's defamation claim. In this now-consolidated matter, Plaintiff, Neil Heslin, has asserted claims against Free Speech Systems and Infowars for defamation and intentional infliction of emotional distress, with these claims arising out of alleged defamatory comments pertaining to the Sandy Hook tragedy.

In his live pleadings for each of these claims, Plaintiff goes through a litany of alleged videos, articles, and interviews involving Free Speech Systems and/or Infowars that go as far back as 2013. Yet, upon review of Plaintiff's causes of action, the Court will find:

(i) Plaintiff's defamation claim involves only two (2) broadcasts from June 26, 2017 (the broadcast involving Mr. Shroyer) and July 20, 2017 (alleged rebroadcasting of Mr. Shroyer's June 26, 2017 broadcast);[1] and

(ii) Plaintiff's IIED claim encompasses only nine (9) videos, two (2) of which are the same videos upon which Plaintiff has based his defamation claim. The earliest video referenced in Plaintiff's IIED cause of action is from November 18, 2016.[2]

Plaintiff initially filed suit on April 16, 2018 against Free Speech Systems and Infowars asserting claims for defamation. Shortly after the lawsuit was filed, Defendants filed a TCPA motion to dismiss. In response, Plaintiff moved for limited discovery under the TCPA, which was granted by the then-presiding judge, Judge Jenkins, in an order dated August 31, 2018. Defendants resisted this discovery, resulting in Plaintiff filing a motion for contempt seeking sanctions under Rule 215 of the Texas Rules of Civil Procedure. *See Jones v. Heslin,* No. 03-19-00811-CV, 2020 Tex. App. LEXIS 2441, at *3 (Tex. App.—Austin March 25, 2020, pet. denied) (mem. op.). After Plaintiff filed his motion for contempt, Defendants initiated an appeal on the basis that the district court had not timely ruled on their TCPA motion to dismiss and thus it had been denied as a matter of law. The Third Court of Appeals determined the appeal was premature and dismissed it for lack of jurisdiction.

[1] *See* Plaintiff's Third Am. Pet. at ¶55.

[2] *See* Plaintiff's Orig. Pet. at ¶71.

Plaintiff then filed his First Amended Petition in his defamation lawsuit on June 26, 2019, adding claims for intentional infliction of emotional distress. However, Plaintiff then further amended his petition, ultimately filing his Third Amended Petition—his live pleading—on August 8, 2019, wherein Plaintiff removed the IIED claim entirely. That same day, Plaintiff filed a second lawsuit against Defendants, Mr. Jones, Infowars, and Free Speech Systems, re-asserting his cause of action for intentional infliction of emotional distress. In that claim, Plaintiff asserts that videos from: (i) November 28, 2016; (ii) March 8, 2017; (iii) April 22, 2017; (iv) June 13, 2017; (v) June 19, 2017; (vi) June 26, 2017; (vii) July 20, 2017; (viii) October 26, 2017; and (ix) April 20, 2018.

After the defamation case was remanded back to the district court following the first attempted appeal, a hearing on Defendants' TCPA motion and Plaintiff's motion for contempt occurred on October 17, 2019. That same hearing also addressed Plaintiff's motion for expedited discovery in the IIED case. At this hearing, Defendants offered to stipulate to or concede facts pleaded by Plaintiff to obviate the need to respond to the TCPA discovery requests in the defamation case. Judge Jenkins subsequently signed orders on October 18, 2019 which: (i) granted Plaintiff's motion for contempt in the defamation case; (ii) denied Defendants' TCPA motion to dismiss in the defamation case; and (iii) granted Plaintiff's motion for expedited discovery in the IIED case. In the order granting Plaintiff's motion for contempt in the defamation case, the Court ordered that "pursuant to Rule 215.2(b)(3), the matters regarding which the August 31, 2018 order was made (Plaintiff's burden in responding to Defendants' TCPA Motion) shall be taken to be established in favor of Plaintiff for the purposes of the TCPA Motion." *Id.*

At the same time, the district court denied Defendants' TCPA motion to dismiss in Plaintiff's defamation case. *Id.* Another hearing in the IIED case occurred on December 18, 2019 regarding Defendants' TCPA motion to dismiss in the IIED case and a motion for sanctions filed

by Plaintiff regarding alleged discovery deficiencies in the IIED case. On December 20, 2019, the trial court denied Defendants' TCPA motion to dismiss and granted Plaintiff's motion and awarded $100,000.00 in sanctions and took Plaintiff's request for a default judgment in the IIED case under advisement.

In November 2019, Defendants again filed an appeal of the trial court's denial of their TCPA motion to dismiss in the defamation case, and subsequently appealed the denial of the TCPA motion in the IIED claim. Defendants' appeals were ultimately denied both by the Third Court of Appeals and the Texas Supreme Court, and the cases were remanded back to the trial court on June 4, 2021. Plaintiff then filed a Second Motion for Contempt Under Rule 215 on July 6, 2021, contending that Defendants had failed to comply with the August 31, 2018 discovery order entered by Judge Jenkins and seeking sanctions, including a default judgment being entered against Defendants. Plaintiff also filed a supplemental brief in support of his motion for default judgment in the IIED case, contending Free Speech Systems and Infowars had not complied with the district court's December 2019 discovery order in Plaintiff's IIED case.

In each of Plaintiff's motions and supplemental brief in support at issue here, Plaintiff largely focused on rehashing the past TCPA discovery issues in the case, all of which had already been addressed by Judge Jenkins. However, Plaintiff contended that the December 20, 2019 order in the IIED case warranted the granting of a default judgment against all Defendants for all of Plaintiff's claims. In his briefing, Plaintiff has a number of complaints regarding the entity-Defendants' alleged discovery misconduct. As laid out in Plaintiff's supplemental brief in support of his motion for default judgment, Plaintiff contends the following discovery abuse(s) have occurred:

(i) Infowars "refused to prepare its corporate representative" in a second deposition;

(ii) Infowars withheld tens of thousands of emails;

(iii) Infowars provided "false and evasive discovery responses;"

(iv) Infowars failed to order a litigation hold until almost a year after being sued;

(v) Infowars improperly relied on individual employees to search their own files and devices for responsive documents, and not a single employee returned a single responsive document;

(vi) Infowars failed to preserve and search all its electronically stored data, including file storage servers, cloud servers, and devices held by employees;

(vii) Infowars failed to preserve and search its internal messaging services;

(viii) Infowars failed to preserve its social media accounts despite multiple warnings from the social media companies, which led to their deletion; and

(ix) Infowars failed to preserve and produce the relevant videos about Sandy Hook, the evidence at the heart of Plaintiff's claims.

See Plaintiff's Supp. Brief in Support of Mtn. for Default Judgment at 14-15.

To support these allegations, Plaintiff's briefing mainly focuses on situations and testimony given in the *Lafferty* matter in Connecticut, which consists of a much broader scope of discovery and other discovery-related issues that go far beyond the scope of Plaintiff's discovery in this case. For example, Plaintiff's supplemental brief cites to testimony from Dr. David Jones, Mr. Jones's father, given in the *Lafferty* case wherein he stated that it was his understanding a search for the term "Sandy Hook" had yielded about 80,000 emails. *See* Pl.'s Supp. Brief at 18. But Plaintiff does not mention that the search result referenced by Dr. Jones involved included what has since been determined to be multiple duplicates of the same emails.

Plaintiff also discusses issues with prior corporate representative depositions, while failing to remind the Court that those issues were dealt with by Judge Jenkins when he issued monetary sanctions and denied Defendants' TCPA motion to dismiss in December 2019. And it is difficult

to understand how the corporate representative situation—which was not a current discovery deficiency issue at the time of the Court's order granting default-judgment sanctions—has any direct bearing or relationship to the document production issues Plaintiff discusses at length in its briefing.

As shown in the list above, most of Plaintiff's briefing deals with Plaintiff's contentions of discovery misconduct by Free Speech Systems and/or Infowars in failing to preserve relevant evidence. Despite the myriad of allegations against the entity-Defendants in this case, there is absolutely no evidence that Free Speech Systems and/or Infowars intentionally destroyed or tampered with any relevant evidence. *See* Ex. 2, Declaration of Alex Jones at ¶11. At worst, Plaintiff's allegations describe a potential spoliation situation where the Court must determine the extent of any duty the entity-Defendants had to preserve things like social media accounts that are outside the bounds of the nine (9) broadcasts referenced in Plaintiff's defamation and IIED causes of action—only four (4) of which are legally viable due to statute-of-limitations issues—and give a negative-inference instruction to the jury, if appropriate. But the reality of this whole situation is that while the Court may dislike the Defendants in this case and the underlying facts of this case, the conduct complained of by Plaintiff simply does not constitute the type of "exceptional" conduct that would support imposing death-penalty sanctions.

On August 31, 2021, the Court held a hearing on Plaintiff's second motion for contempt and continuation of Plaintiff's request for a default judgment in the IIED case, along with other sanctions motions filed by the remaining Plaintiffs in the other cases. At this hearing, Plaintiff's counsel again went through the litany of past, moot TCPA-discovery issues that had already been dealt with by Judge Jenkins. Plaintiff also spent an inordinate amount of time focusing on post-lawsuit comments by Mr. Jones about the Connecticut cases, the plaintiffs, and their counsel and

other critical comments Mr. Jones has made about the cases. However, Plaintiff did *not* connect the dots between these post-lawsuit comments by Mr. Jones and the alleged discovery abuses by Free Speech Systems and Infowars for which Plaintiff sought a default judgment.

Indeed, Plaintiff's motion arguments about alleged discovery abuses deal almost exclusively with Free Speech Systems and/or Infowars and the alleged failure by those Defendants to preserve relevant evidence. The alleged failure to preserve evidence—particularly video broadcasts Plaintiff claims go to the "heart" of his claims—is not the same type of sanctionable conduct like the alleged failure or intentional refusal to produce those video broadcasts as has been implied by Plaintiff throughout this litigation. Failing to produce the video broadcasts if the entity-Defendants were in possession, custody, or control of those video broadcasts would fall within the category of possible discovery misconduct. On the other hand, it is not discovery misconduct or intentional obstruction of the discovery process when neither Free Speech Systems nor Infowars had custody, possession, or control of any other responsive production—especially as it pertains to producing copies of video broadcasts and not being able to do so because Defendants were surprisingly permanently banned from using the platform Defendants utilized to store those video broadcasts.

As a reminder, Free Speech Systems and/or Infowars maintained those video broadcasts almost entirely on YouTube's servers, and when that platform suddenly permanently banned Infowars, all access to and control of those videos was lost. *See* Ex. 2, Declaration of Alex Jones at ¶9. Again, that is a spoliation of evidence concern, not discovery misconduct warranting death-penalty sanctions. And, to the extent Free Speech Systems and/or Infowars have copies of any video broadcasts cited in Plaintiff's live pleadings, they have been produced to Plaintiff. *Id.* at ¶10.

The fact of the matter is that the Court's previous findings to the contrary, Free Speech Systems and Infowars have produced all documents, videos, etc. that are within their care, custody, possession, and/or control which are responsive to Plaintiff's requests. To wit, Free Speech Systems has produced over 90,000 pages of documents and copies of at least eighty-five (85) video broadcasts. *See* Ex. 2 at ¶¶7-8; *see also* Plaintiff's Supp. Brief in Support of Mtn. for Default Judgment at 32 (describing Free Speech Systems producing 29 videos, then produced 42 additional videos, followed by production of 14 more videos). Plaintiff's Second Motion for Contempt does not cite to any specific alleged discovery misconduct by Free Speech Systems and/or Infowars beyond making generalized allegations that "Defendants have not taken any actions in this Court since remand or responded to their discovery obligations." *See, e.g.,* Plaintiff's Second Mtn. for Contempt at 20.

One of the main issues with Plaintiff's default-judgment sanctions request which Defendants attempted to discuss with the Court at the August 31, 2021 hearing is how the Court was considering (and subsequently granted) merit-determinative, default-judgment sanctions, based on overblown allegations of discovery abuses pertaining to limited TCPA discovery—not full-fledged written discovery under the normal procedural circumstances in civil cases. *See* Ex. 1, Transcript of August 31, 2021 hearing at 77:22-78:17. That discovery. by its very nature of being limited TCPA discovery, was intended to be constrained in scope and solely for the purposes of allowing Plaintiff an adequate opportunity to develop potential evidence to overcome Defendants' TCPA motions to dismiss. Consequently, as the discovery at issue was solely under the TCPA, the need for Defendants to fully respond to Plaintiff's limited TCPA discovery essentially became moot or was otherwise unnecessary as soon as Judge Jenkins denied Defendants' TCPA motions to dismiss.

Even if the Court disagrees with that position, Plaintiff's motion for default judgment and second motion for contempt at best supports the possibility that the Court could consider whether a spoliation finding and/or instruction is appropriate. There is no evidence in this case that Defendants have destroyed or tampered with relevant evidence. At most, the record reflects that Defendants were alleged to have not fully complied with Plaintiff's TCPA discovery requests and the argument that Defendants also did not comply with a subsequent order to do so. But this certainly does not constitute behavior that is "exceptional misconduct" to justify the trial court's refusal to test lesser sanctions before rendering a default judgment on the merits. *Cire v. Cummings*, 134 S.W.3d 835, 842 (Tex. 2004) (internal citations omitted)).

Moreover, for the Court to impose sanctions based on the alleged failure to produce documents in discovery, the law requires that Court must "determine that the complaining party proved that the alleged offending party failed to produce a document within its possession, custody, or control." *GTE Commc'ns Sys. Corp. v. Tanner*, 856 S.W.2d 725, 729 (Tex. 1993). While Plaintiff lodged numerous allegations to this effect in its motion for default judgment, supplemental brief in support, and second motion for contempt, Plaintiff overall failed to provide any concrete evidence that proved Free Speech Systems and/or Infowars had possession, custody, or control of certain documents (or video broadcasts) and failed to produce them. *Id.* As referenced above, Plaintiff's briefs only point to Dr. Jones's testimony about the estimated results of an email search utilizing search terms provided by the plaintiffs in the *Lafferty* matter in Connecticut. Again, that involves a much broader scope of discovery and included multiple duplicates of the same emails (which have been produced in this litigation), but it is not evidence that Free Speech Systems and/or Infowars has failed to produce any other documents in its care, custody, or control.

Plaintiff's briefs and arguments at the August 31, 2021 hearing centered on Defendants' inability to produce certain documents/video broadcasts in response to Plaintiff's requests because

Defendants did not save, store, or otherwise "preserve" such documents, which Plaintiff contends Defendants had a duty to do so. Plaintiff also generally alleged Defendants had not supplemented their production responses, without even considering the idea that Defendants had very few to no documents with which to supplement their production, since all responsive documents had already been previously produced (and thus Defendants had no obligation to supplement anything). *See, e.g.,* Ex. 2 at ¶¶3, 9, 11. Despite these significant flaws in Plaintiff's motions, and without determining whether Defendants had any such duties to preserve the evidence Plaintiff complained in his motions is no longer available, the Court concluded that default-judgment sanctions were warranted. The Court even went so far as to find that the last batch of approximately 6,000 pages documents produced by Defendants a few days before the August 31st hearing "[did] not satisfy" Defendants' outstanding obligations." *See* Am. Order at 3. The Court issued this conclusive finding even though the Court had not reviewed the supplemental production, nor did Plaintiff put on any admissible evidence detailing what all comprised this supplemental production. Rather, Plaintiff's counsel made the bald, conclusory statement in Plaintiff's response briefing and at the oral hearing that the supplemental production failed to satisfy any of the complained-of discovery obligations.

Seemingly taking Plaintiff's claims entirely at face value, the Court subsequently granted Plaintiff's motion for contempt and motion for default judgment, ultimately signing an amended order on October 26, 2021 wherein the Court entered a default judgment as to liability against all Defendants, including Free Speech Systems and Infowars. In the Court's order, there is no delineation between the individual Defendants, or the alleged discovery misconduct attributed to each Defendant. To the contrary, the order discusses: (i) how "Defendants" violated other discovery orders in the other Sandy Hook cases before this Court; (ii) that "Defendants" have

engaged in pervasive and persistent obstruction of the discovery process in general; (iii) that "Defendants" refused to produce critical evidence; (iv) that "Defendants" have shown a "deliberate, contumacious, and unwarranted disregard for this Court's authority;" and (v) that the Court found that "Defendants' egregious discovery abuse justifies a presumption that its defenses lack merit." *See* Amended Order dated October 26, 2021 at 3-4. The Court likewise granted Plaintiff monetary sanctions for Plaintiff's attorneys' fees in connection with the motion.

Free Speech Systems and Infowars are seeking to have the Court reconsider its ruling on the motion for contempt and deny Plaintiff's motion for default judgment as to Free Speech Systems and Infowars, because the reality is Defendants had produced essentially every responsive document they could prior to the August 31, 2021 hearing. In fact, it appears the Court granted the default-judgment sanctions against Free Speech Systems and Infowars based on their *inability* to produce documents which were *not* in Defendants' care, possession, custody, or control and thus could not actually produce, which directly contradicts prevailing Texas law. *See GTE,* 856 S.W.2d at 729 (holding that a trial court must first determine Defendants failed to produce documents which are within their possession, custody, or control before being able to impose sanctions). As stated above, the complaints made by Plaintiff about Defendants' duty to preserve evidence and failure to do so raises spoliation concerns, not default-judgment sanctions. *See Wal-Mart Stores, Inc. v. Johnson,* 106 S.W.3d 718, 721-22 (Tex. 2003) (explaining that in situations involving unavailable, lost, altered, or destroyed evidence, a spoliation instruction may be warranted depending on the impact that unavailable evidence has on the party's ability to present its case and the reasons for its unavailability—i.e., intentional destruction versus the unintended loss of custody, control, or possession of evidence).

in its amended order, the Court made no specific findings as to Free Speech Systems or Infowars nor does the Court's order discuss specific conduct of these entity-Defendants beyond general statements that Defendants violated prior discovery orders in this case and other, separate cases with different circumstances, including the *Lafferty* case in Connecticut. *See* Am. Order at 3-4. Without providing further details, the Court found that "[i]n sum, Defendants have been engaged in pervasive and persistent obstruction of the discovery process in general." *Id.* at 4.

The Court also determined that the alleged conduct, or lack of participation in discovery, justified the presumption that Defendants' defenses to Plaintiff's claims lack merit. *Id.* That is simply incorrect, particularly as to the defenses on the merits and the underlying law applicable to Plaintiff's claims which are not impacted in any way by discovery or the alleged lack thereof. And given the nature of Plaintiff's defamation and IIED claims against Defendants, it is likewise clear that Free Speech Systems's and Infowars's defenses to such claims have merit regardless of any alleged discovery issues. For example, these entity-Defendants have the obvious, merits-based defense to the defamation claims, in part based on the argument that the statements by Mr. Shroyer in the June 26, 2017 broadcast (and re-aired on July 20, 2017) are substantially true or are otherwise not defamatory. At the very least, the Court can see how regardless of the discovery situation, these entity-Defendants have meritorious defenses to Plaintiff's defamation claims which they should be entitled to assert to a jury at trial for a full determination of Plaintiff's claims entirely on the merits.

Free Speech Systems and Infowars similarly have meritorious defenses to Plaintiff's IIED claims, including, but not limited to: (i) Plaintiff's IIED claims are truly just defamation claims which are time-barred; and (ii) Plaintiff has no evidence Free Speech Systems and/or Infowars said, advocated for, or otherwise did anything with the specific intent to cause emotional distress

to Plaintiff. Because Plaintiff has never actually demonstrated discovery conduct by the entity-Defendants in this now-consolidated matter has been so out-of-bounds and in such bad faith as to warrant default-judgment sanctions, Free Speech Systems and Infowars request the Court reconsider its ruling on Plaintiff's Second Motion for Contempt and Motion for Default Judgment and instead deny Plaintiff's motions to allow this case to proceed to trial so that a jury can make determinations on the underlying merits of Plaintiff's claims against these Defendants.

II. ARGUMENT AND AUTHORITIES

The Court does indeed have the inherent authority under Rule 215 to enter a default judgment as sanctions for alleged discovery abuses; however, Free Speech Systems and Infowars contend that such sanctions are completely unwarranted and are so unjust as to violate each of these Defendant's due process rights to have a jury hear the merits of the case on both liability and damages and render a verdict based on the merits of Plaintiff's defamation and IIED claims—to the extent the IIED claims survive summary judgment. None of the alleged discovery issues complained of by Plaintiff justify the extreme measure of death-penalty sanctions. While a trial court has the power to issue sanctions, that sanction power is limited in that the court "may not impose a sanction that is more severe than necessary to satisfy its legitimate purpose." *Cire,* 134 S.W.3d at 839.

Sanctions for discovery abuse serve three legitimate purposes: (1) to secure compliance with the discovery rules; (2) to deter other litigants from similar misconduct; and (3) to punish violators. *Chrysler Corp. v. Blackmon,* 841 S.W.2d 844, 849 (Tex. 1992). When a party fails to comply with proper discovery requests or fails to obey an order to provide or permit discovery, the trial court may, after notice and hearing, make such orders regarding the failure, which includes, among other things, an order striking pleadings, dismissing with or without prejudice the

action or proceedings, or rendering a default judgment against the disobedient party. *See* TEX. R. CIV. P. 215.2. Although punishment, deterrence, and securing compliance continue to be valid reasons for imposing sanctions, these considerations alone will not justify "trial by sanctions." *Chrysler Corp.*, 841 S.W.2d at 849; *see also Westfall Family Farms, Inc. v. King Ranch, Inc.*, 852 S.W.2d 587, 591 (Tex. App.—Dallas 1993, writ denied).

Notwithstanding rule 215, discovery abuse sanctions must be "just." *Chrysler Corp.*, 841 S.W.2d at 849; *see also TransAm. Nat. Gas Corp. v. Powell*, 811 S.W.2d 913, 917 (Tex. 1991) (orig. proceeding). Moreover, so-called death penalty sanctions are limited by constitutional due process. *Id.* at 917. Thus, "a death penalty sanction cannot be used to adjudicate the merits of claims or defenses unless the offending party's conduct during discovery justifies a presumption that its claims or defenses lack merit." *Paradigm Oil, Inc. v. Retamco Operating, Inc.*, 372 S.W.3d 177, 184 (Tex. 2012).

The default judgment entered by this Court against Free Speech Systems and Infowars undoubtedly constitutes a "death penalty" sanction. A death penalty sanction is a severe form of sanction that prevents a party from contesting liability and allows for the determination of liability based on the party's discovery conduct rather than the dispute's merits. *Ring & Ring v. Sharpstown Mall Tex., LLC*, No. 01-16-00341-CV, 2017 WL 3140121, at *18 (Tex. App.—Houston [1st Dist.] July 25, 2017, no pet.) (mem. op.) (citing *TransAmerican*, 811 S.W.2d at 917-18). When a trial court places a defendant in default, the result is that the defaulting defendant admits all pleaded facts establishing liability. *Id.* (citing *Paradigm Oil*, 372 S.W.3d at 186). The imposition of death-penalty sanctions that permit adjudication based on discovery conduct is limited by constitutional due process. *Id.* (citing *TransAmerican*, 811 S.W.2d at 917).

Absent a party's flagrant bad faith or counsel's callous disregard for the responsibilities of discovery under the rules, sanctions that prevent a decision on the merits of a case cannot be justified. *Chrysler Corp.,* 841 S.W.2d at 849; *see also TransAmerican,* 811 S.W.2d at 918. However, even in those cases where death penalty sanctions can be justified, a trial court must first consider less stringent sanctions and if those lesser sanctions would adequately promote compliance, deterrence, and punishment. *Chrysler Corp,* 841 S.W.2d at 849; *see also TransAmerican,* 811 S.W.2d at 917. In all but the most exceptional cases, before the trial court may strike a party's pleadings, the record must show that the trial court considered and tested less stringent sanctions. *Cire,* 134 S.W.3d at 842; *see also GTE,* 856 S.W.2d at 730. Therefore, the record must "contain some explanation of the appropriateness of the sanctions imposed." *Spohn Hosp. v. Mayer,* 104 S.W.3d 878, 883 (Tex. 2003). While case determinative sanctions may be imposed in the first instance, that is only in exceptional cases when they are clearly justified, and it is fully apparent that no lesser sanctions would promote compliance with the rules. *GTE,* 856 S.W.2d at 729; *see also Spohn Hosp.,* 104 S.W.3d at 883 (requiring that "the record should contain some explanation of the appropriateness of the sanctions imposed.").

As with other discovery sanctions, death penalty sanctions may not be excessive and must bear some relationship to the offensive conduct. *TransAmerican,* 811 S.W.2d at 917. In addition, the imposition of death penalty sanctions is limited by constitutional due process because the striking of a party's pleading and dismissal of its action necessarily results in the adjudication of the party's claims or defenses "without regard to their merits but based upon the parties' conduct of discovery." *Id.* at 918. Therefore, before the trial court may impose death penalty sanctions, the court must determine the offensive conduct "justif[ies] a presumption that the offending party's

claims or defenses lack merit." *Id.* In other words, the sanctions must be "just" in the context of the alleged discovery abuse. *Id.*

The imposition of the death-penalty sanction is limited by constitutional due process and therefore, "out to be the exception rather than the rule." *TransAmerican,* 811 S.W.2d at 917, 919. "Discovery sanctions cannot be used to adjudicate the merits of a party's claims or defenses unless a party's hindrance of the discovery process justifies a presumption that its claims or defenses lack merit." *Id.* at 918. And sanctions which are so severe as to preclude presentation of the merits of the case should not be assessed absent a party's flagrant bad faith or counsel's callous disregard for the responsibilities of discovery under the rules." *Id.* Even when a party has demonstrated "flagrant bad faith[,]" "lesser sanctions must first be tested to determine whether they are adequate to secure compliance, deterrence, and punishment of the offender." *Chrysler Corp.*, 841 S.W.2d at 849. The Texas Supreme Court has consistently emphasized the continued validity of the rule that generally lesser sanctions should be tested first. *Cire,* 134 S.W.3d at 842; *see also Hamill v. Level,* 917 S.W.2d 15, 16 n. 1 (Tex. 1996).

In *TransAmerican Natural Gas Corp. v. Powell*, 811 S.W.2d 913 (Tex. 1991), the Texas Supreme Court established a two-part test for determining whether a sanctions award is "just." First, a direct relationship must exist between the offensive conduct and the sanction imposed, which means that the sanction must be "directed against the abuse and toward remedying the prejudice caused [to] the innocent party." *Cire,* 134 S.W.3d at 839 (quoting *TransAmerican,* 811 S.W.2d at 917). Second, the sanction must not be excessive, meaning that "[t]he punishment should fit the crime," and the courts must consider the availability of less-stringent sanctions and whether the less-stringent sanctions would fully promote compliance." *Id.* (quoting *TransAmerican,* 811 S.W.2d at 917); *see also Taylor v. Taylor,* 254 S.W.3d 527, 533 (Tex. App.—

Houston [1st Dist.] 2008, no pet.) ("[A] sanction imposed should be no more severe than necessary to satisfy its legitimate purposes, which include securing compliance with discovery rules, deterring other litigants from similar misconduct, and punishing violators.").

Applying the law to the facts of this case regarding Free Speech Systems and Infowars, there is simply nothing in Plaintiff's second motion for contempt or motion for default judgment (and supplemental briefing) nor Plaintiff's counsel's arguments at the hearing that shows these Defendants committed discovery abuses so offensive as to support the default-judgment sanction. While Plaintiff (and the Court) have been frustrated with these discovery concerns with Defendants, there has been no evidence that Defendants have intentionally destroyed or lost evidence or that Defendants have failed or refused to produce documents/videos/etc. that are within their care, custody, possession, or control. Quite the contrary, the only evidence in that regard is that Defendants have produced everything to which Defendants have access which is responsive to Plaintiff's discovery requests. *See* Ex. 2 at ¶3. But the Court should not issue default-judgment sanctions against Free Speech Systems and Infowars based on these Defendants' being unable to produce additional documents or video broadcasts (or other data) since they no longer have access to certain third-party platforms where these documents/videos/social media posts/etc. were posted and being stored.

As such, Free Speech Systems and Infowars respectfully ask that the Court review its decision granting a default judgment to objectively determine even if some discovery misconduct or deficiencies occurred early on in this litigation, Defendants' alleged conduct simply does not rise to such a shocking level that would make this an "exceptional case" warranting death-penalty sanctions. A default-judgment sanction against Free Speech Systems and Infowars was simply not justified based on the state of Texas law analyzing such default-judgment sanction issues. Beyond

the sanctions not being justified, Plaintiff likewise failed to demonstrate that any alleged discovery abuse(s) by Free Speech Systems and/or Infowars were so offensive as to justify a presumption that his defenses to such defamation claims lack merit. *TransAmerican,* 811 S.W.2d at 917. And the Court's basis for considering whether lesser remedies would be effective instead of a default judgment—Defendants' "general bad faith approach to litigation"—without more, is simply an insufficient, conclusory basis justifying the default-judgment sanction. *See* Am. Order at 4.

Despite Plaintiff's dramatic briefing and arguments to the contrary, Plaintiff simply did not meet the burdens required by the Texas Supreme Court in *TransAmerican* to be entitled to a default-judgment sanction against Free Speech Systems and/or Infowars. The alleged conduct of these Defendants highlighted by Plaintiff in his briefing at most shows that the Court may have grounds to consider whether a spoliation instruction would be appropriate (if Plaintiff requests one). But none of the conduct allegedly committed by Free Speech Systems and/or Infowars supports the severe sanction of a default judgment, particularly where the issue is Defendants no longer have custody, possession, or control of certain evidence, allegedly failed to preserve evidence, and otherwise were (and still are) unable to produce documents because Defendants do not have them. With no intentional destruction of evidence or anything to prove any concerted effort by either entity-Defendant to refuse to produce relevant documents or fail to produce documents of which they do have possession, custody, or control, Texas law does not support the imposition of the death-penalty sanctions order by the Court.

Second, a default-judgment sanction against Free Speech Systems and Infowars is extremely excessive and in no way fits whatever alleged "crime" these Defendants allegedly committed as it pertains to discovery in Plaintiff's defamation and IIED cases. *Id.* More to the point, while the Court states in its order that it considered lesser sanctions, as Defendants have

pointed out in this briefing, none of the justifications provided by the Court as reasons for not imposing lesser restrictions ever specify the alleged misconduct by Free Speech Systems or Infowars (beyond generalized statements that Defendants violated discovery orders and engaged in "pervasive and persistent obstruction of the discovery process in general."). *See* Am. Order at 4.

Furthermore, while Plaintiff has asserted defamation and IIED claims against Free Speech Systems and Infowars, and the discovery Plaintiff has complained about has essentially no relevance to the broadcasts Plaintiff specifically cites as the basis for his defamation and IIED claims. In fact, these Defendants (and their co-Defendants) continue to contend Plaintiff's IIED claims are just defamation claims improperly perched as IIED claims for statute-of-limitations purposes as a way for Plaintiff to try and bring in front of the jury another year's worth of broadcasts he contends are defamatory or intentionally inflicted emotional distress but should be time-barred based on the one-year statute of limitations for defamation claims. Regardless of the cause of action, the broadcasts themselves—and questions surrounding Defendants' alleged liability for in those-listed broadcasts—are the only evidence needed to determine the merits of Plaintiff's defamation and IIED claims, to the extent the IIED claim should survive summary dismissal.

For example, the Texas Supreme Court has consistently held that in the context of defamation claims, a determination of whether a broadcast is defamatory is based on the "broadcast as a whole," the "statements in the broadcast," and the "broadcast's gist." *Neely v. Wilson*, 418 S.W.3d 52, 63-64 (Tex. 2013) (citing *Turner v. KTRK Television, Inc.*, 38 S.W.3d 103, 114-15 (Tex. 2000) ("the meaning of a publication, and thus whether it is false and defamatory, depends

on a reasonable person's perception of the entirety of a publication and not merely on individual statements")).

Plaintiffs' pleadings also clearly demonstrate that the IIED claims are dependent upon the allegedly defamatory statements and conduct of Free Speech Systems and/or Infowars, either directly or based on vicarious liability for Mr. Shroyer and/or Mr. Jones. In other words, the "extreme and outrageous conduct [Free Speech Systems and Infowars] are alleged to have engaged in is making allegedly defamatory statements about Plaintiff[]." *Patel v. Patel,* No. 14-18-00771-CV, 2020 WL 2120313, at *19 (Tex. App.—Houston [14th Dist.] May 5, 2020, no pet.). Because Plaintiff's IIED claims depend on the allegedly defamatory statements of these Defendants (or vicarious liability based on these statements), Plaintiff undoubtedly has (or had) another remedy such that the IIED claims should be dismissed as a matter of law. And even if they are not, Plaintiff's IIED claims as to any video broadcast before August 8, 2017 are time-barred as a matter of law based on the applicable two-year statute of limitations (which is seven (7) of the nine (9) videos listed in the IIED claim).[3]

Thus, Defendants contend that Plaintiff has the entirety of the "evidence" and discovery he needs to argue the merits of his defamation and IIED claims against Free Speech Systems and Infowars. To wit, even if Plaintiff claims he does is lacking some sort of important evidence he claims is relevant to his lawsuit—which only implicates four (4) legally viable and actionable broadcasts that are within the applicable limitations periods—that does not justify the Court granting default-judgment sanctions. Indeed, Plaintiff has made no effort to obtain discovery from any of the third-party platforms, specifically YouTube, to see if YouTube still has any of these

[3] Plaintiff's second lawsuit for the IIED claim was filed August 8, 2019. IIED claims are subject to two-year statute of limitations. *See* TEX. CIV. PRAC. & REM. CODE § 16.003. Thus, for any videos or broadcasts prior to August 8, 2017, those claims are time barred. Thus, Plaintiff's IIED claims should at most be based upon only the October 26, 2017 and April 20, 2018 broadcasts.

video broadcasts and data for those video broadcasts. That is Plaintiff's burden to try and obtain to prove the merits of its case, which the Court has currently removed by granting death-penalty sanctions based on Defendants being unable to produce further documents to Plaintiff. In addition, if the Court correctly reconsiders its prior ruling and determines Defendants should be allowed their day in Court with a jury determining the full merits of Plaintiff's claims, Plaintiff will truly have suffered no prejudice or otherwise been deterred in any significant way in his efforts to obtain discovery from Free Speech Systems and Infowars.

Because of the foregoing, it is now apparent that the default-judgment sanctions against Free Speech Systems and Infowars were not justified and arguably constitute a violation of these Defendants' due process rights. Yet, Free Speech Systems and Infowars believe that an objective review of the Court's prior default-judgment ruling and findings when compared to the alleged discovery issues previously briefed by Plaintiff, simply do not demonstrate any misconduct by Free Speech Systems or Infowars that is so exceptional and so out-of-bounds to justify imposing default-judgment sanctions.

Due process and the underlying facts of this case demand that Plaintiff be required to present the merits of his defamation and IIED claims against Free Speech Systems and Infowars to a jury to decide and that these Defendants be allowed to defend against such claims, as opposed to the current trial-by-sanction on liability that has occurred. Even if the Court finds some sort of significant discovery misconduct by Free Speech Systems and/or Infowars has occurred—which it has not—discovery has nothing to do with the merits of these Defendants' defenses to Plaintiff's defamation claims and the merits and legal defenses to Plaintiff's IIED claims (especially the statute-of-limitations defense as to seven (7) of the nine (9) videos referenced in Plaintiff's IIED cause of action). Consequently, Free Speech Systems and Infowars respectfully request the Court

reconsider its prior ruling and withdraw its prior default0judgment sanctions as to Free Speech Systems and Infowars and deny Plaintiff's motion for contempt and motion for default judgment as it pertains to Plaintiff's claims against these entity-Defendants.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Defendants, Free Speech Systems, LLC and Infowars, LLC, pray that the Court grant this motion for reconsideration and ultimately deny Plaintiff's motion for contempt and motion for default judgment, withdrawing the default-judgment sanction entered by the Court's amended order on October 26, 2021, along with such other and further relief to which Defendants, Free Speech Systems, LLC and Infowars, LLC, may be justly entitled.

[Signature on next page]

Dated: December 30, 2021.

Respectfully submitted,

By: *__/s/ Bradley J. Reeves_____*
Bradley J. Reeves
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ATTORNEY FOR DEFENDANTS

CERTIFICATE OF CONFERENCE

The undersigned counsel for Defendants has previously conferred with counsel for Plaintiff regarding this Motion, and counsel for Plaintiff has indicated Plaintiff is **opposed** to this Motion.

/s/ Bradley J. Reeves
Bradley J. Reeves

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by the method indicated below upon all counsel of record and interested parties in accordance with the Texas Rules of Civil Procedure on December 30, 2021.

Mark Bankston
William Ogden
FARRAR & BALL, LLP
1117 Herkimer Street
Houston, TX 77008

via electronic service

/s/ Bradley J. Reeves
Bradley J. Reeves

Automated Certificate of eService

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Bradley Reeves on behalf of Bradley Reeves
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